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Human Rights Committee
111th session

Summary record (partial)* of the 3077th meeting
Held at the Palais Wilson, Geneva, on Monday, 14 July 2014, at 10 a.m.

Chairperson: Sir Nigel Rodley

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* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 10.05 a.m.

Organizational and other matters

Methods of work

1. **The Chairperson** said that the twenty-sixth meeting of chairpersons of human rights treaty bodies had provided an opportunity to discuss which treaty body practices would be affected by General Assembly resolution 68/268 on strengthening and enhancing the effective functioning of the human rights treaty body system. While it was not the task of the Committee to implement the resolution, it nevertheless needed to respond positively to suggestions and ensure that any resources allocated to it for the discharge of its functions by the General Assembly were used for their intended purpose.

2. Given that, owing to their late distribution, certain treaty bodies had not been able to discuss the three papers prepared by the secretariat which had served as the basis for discussion at the meeting, the chairpersons had agreed, in line with the Poznan Statement, not to implement certain recommendations that went significantly beyond existing treaty body practice. The draft conclusions, decisions and recommendations and their annexes (documents without a symbol circulated in the meeting room), which had been adopted by the chairpersons at their meeting on the basis of the three secretariat papers, provided suggestions on alignment of practices based on good practices by various treaty bodies.

3. The General Assembly had recognized the backlogs experienced by treaty bodies and had responded to that problem by providing for extra treaty body meeting time in the form of either extended meetings or dual chambers. The chairpersons had emphasized that resources provided by the General Assembly needed to be in addition to budgetary and extrabudgetary resources. Ultimately, the resolution had exceeded the expectations of many chairpersons but had little impact on existing practices.

4. **Mr. Shany** asked whether the chairpersons had discussed the issue of dual chambers or whether it was incumbent on each Committee to devise its own strategy.

5. **The Chairperson** said that they had indeed discussed the issue of dual chambers and that, while the resolution suggested they should be used, no treaty body was committed to using them. The Committee needed to decide whether to use extra meeting time by adding a week to sessions or by designating dual chambers within the present structure of sessions.

6. **Mr. Neuman** said that the Committee's objection to implementing certain recommendations had been based on concern about the interpretation of the Poznan Statement at the meeting of chairpersons, rather than the late distribution of the secretariat papers. Although those papers were helpful, some of their suggestions had been unacceptable in that they tended towards excessive uniformization of the treaty bodies' methods of work without regard for each body's specific characteristics.

7. **The Chairperson** said that the Poznan Statement had been drawn up by the High Commissioner for Human Rights with a view to generating more efficient alignment of treaty bodies' methods of work. Chairpersons could not take decisions that bound committees to new positions without consultation with their committees. Committees were also free to formally reject proposals. Consultation constituted in-depth discussion in plenary – and not e-mail exchanges.

8. **Mr. Flinterman** asked whether the proposal to hold two annual meetings of chairpersons was likely to be endorsed by the General Assembly. An additional meeting was crucial in order to make progress in strengthening the treaty body system and would have financial implications. In the light of the Poznan Statement, it was important that the committees should discuss, in advance, items on the agenda of the following meeting of

chairpersons, especially the possible alignment of processes for the formulation of general comments and the issue of late reporting and non-reporting by States parties, so as to enable the chairperson who would attend that meeting to make substantive contributions. Some fundamental problems underlying the strengthening of the treaty body system had not been addressed by the resolution and required further discussion by the Committee. Even if there was no agreement on a comprehensive reporting calendar system, the Committee should examine approaches to that question and adopt a leading role in making proposals for future meetings of chairpersons on treaty body strengthening.

9. **The Chairperson** said that the proposal for an additional meeting of chairpersons, or a similar meeting, had stemmed from the dissatisfaction of chairpersons with the cancellation of the inter-committee meeting of the human rights treaty bodies. However, since meetings of chairpersons alone did not provide an adequate basis for an exchange of ideas about alignment of treaty body practices, the Committee might wish to consider preparing a proposal on the form of that extra meeting. Furthermore, it was conceivable that circumstances could arise, as they had done in the past, which called for consultations to take the form of a non-formal meeting. The issue of the comprehensive reporting calendar remained on the agenda.

10. **Ms. Seibert-Fohr** expressed concern that the focus on alignment of practices might restrict the flexibility of the Committee. It was important not to be bound by the draft conclusions, decisions and recommendations but to reflect as a Committee on ways to address issues within the treaty body strengthening system.

11. **Ms. Fox** (Secretary of the Committee) said that the issue of extra meeting time would be considered by the Bureau at the next session. Section I of the draft conclusions, decisions and recommendations regarding the role of the chairpersons contained no controversial details. Equally, section II included no matter requiring comment. The Committee had already adopted a list of issues prior to reporting procedure, which was similar to the simplified reporting procedure. That optional procedure, which applied only to periodic reports, enabled States parties to request that the Committee should adopt a list of issues prior to a report and to subsequently formulate its replies, which the Committee would consider in lieu of a periodic report. As established in the Committee's paper on the implementation of the new optional reporting procedure (CCPR/C/99/4), the list of issues prior to reporting procedure related only to States parties whose reports had been due in 2013 and beyond, and whose reports were at least 10 years overdue. Applications for the procedure had been made by 28 States parties, 3 had specifically expressed their wish not to follow the procedure, and a number had not responded. Under that procedure, the Committee had examined only the report of Uruguay. Currently, 5 States parties' submissions were late. Such delays constituted a challenge to the Committee.

12. Section II A suggested that committees should consider making a simplified procedure available to all States. Extending the procedure for the present Committee would be particularly complicated — though not impossible — given that the Covenant did not provide for periodicity. If it was agreed to extend the procedure, the secretariat would suggest that it should design methodology for that purpose, to be examined by the Bureau, and that State party reports should be submitted in batches for consideration by the Committee.

13. Section II A also proposed that committees might consider making a simplified procedure available for the consideration of initial reports. The Committee's paper on implementation of the new optional reporting procedure, however, stated that the procedure was not to be applied to initial reports. A further recommendation in section II A was that committees should revise their existing reporting guidelines. The Committee had last revised its guidelines in 2010.

14. Turning to section II B, she said that the recommendations on the constructive dialogue were largely in line with the Committee's current practice, but they did contain the suggestion that time limits should be applied where necessary. The Committee already had time limits for NGO briefings. It was for the Committee to decide if it should set similar limits during the dialogue with States parties. Another suggestion was that the Committee should produce a guidance note for States on the dialogue. The secretariat already posted a short guidance note on its website, which it sent to States prior to their appearance before the Committee, and it would not be difficult to expand the note to include information contained in the annex to the document before the Committee (annex I, entitled "Guidance note for States parties in the constructive dialogue") and present it to the Bureau.

15. Again, section II C on concluding observations contained little that the Committee was not already doing. One suggestion had been that the Committee could address structural obstacles in its concluding observations, as it had in the past. If the Committee wished, that section could be restored, but the Committee might consider it unnecessary, particularly in view of the new word limits. As for recommendations, the Committee already set a time frame of one year for certain issues in its recommendations and it might wish to extend that provision to other areas.

16. With regard to section III on reprisals, the Committee might wish to follow the Committee against Torture, which devoted considerable attention to reprisals against members of civil society and NGOs. The Committee had covered the question of reprisals in only two sets of concluding observations and the secretariat had little information on the matter, perhaps precisely because the Committee had no specific procedure in that regard.

17. The Committee would also need to look at the issue of language, mentioned in annex I of the paper before the Committee, which referred to the requirement in General Assembly resolution 68/268 under which the treaty bodies should restrict themselves to three official languages or, in exceptional circumstances, four.

18. **The Chairperson** noted that, if reprisals occurred after a given session, the concluding observations could not, of course, take account of them. He was, however, in favour of appointing a special rapporteur on reprisals. As for the simplified reporting procedure, he asked whether the Committee should offer such a procedure to every country. Although the General Assembly had called for the introduction of the simplified procedure, it must also be borne in mind that the secretariat would have difficulty in making it operable, not least because of the flexibility in the periodicity of the Committee's reporting system. At the same time, the Committee would not wish to release States whose initial reports were substantially overdue from the obligation to produce a full report.

19. **Mr. Rodríguez-Rescia** said that all States should be treated equally, so the simplified procedure should be available to all States or none. Moreover, the option should be offered but not imposed. In one country in which he had held discussions on the topic, the Ministry of Foreign Affairs had felt uncomfortable about the process, as though the Committee was seeking to redesign the Covenant. It felt that it was for States to decide how they presented their reports. Personally, he supported the new methodology, not for administrative or economic reasons but because it was more rational.

20. **The Chairperson** confirmed that it was indeed the Committee's position that the simplified procedure was offered and not required.

21. **Mr. Iwasawa** said that, to date, the Committee had considered only one report under the new procedure, that of Uruguay, in October 2013. The procedure had proved effective and he hoped that other States parties would opt for it. The idea had been that it would help States submit their reports, but equally the Committee did not want to offer the option to States already under an obligation to submit a report in the standard format. The Covenant

was extremely wide-ranging and the Committee needed all relevant information relating to all the articles. The new procedure should therefore not be offered for initial reports.

22. The reason that the Committee had said it would apply the new procedure from 2013 was that it had wished to give States parties time to prepare. However, the facility should not be offered to States whose reports were more than 10 years overdue. The Committee could discuss whether other conditions should be relaxed.

23. **Mr. Shany** asked how many States parties were currently eligible for the new procedure and what proportion of the total number they represented. Efficiency was not the only factor to take into account; the available resources were also relevant. If there was no need to translate reports beforehand, ways could be found to channel the resources saved into the programme of adjustment that the secretariat needed to undertake.

24. **Ms. Majodina** said that the secretariat was doubtless competent to introduce the new methodology, but she requested further information, so that the Committee had some sense of how the process would move forward. She also asked about the problem of backlogs.

25. **Mr. Ben Achour** said he supported the idea that the new procedure should not be applied to initial reports because the Committee could not produce a list of issues if it was unfamiliar with the basic situation. With regard to the periodicity of reports, he asked what the connection was between such periodicity and the simplified procedure. In fact, the Committee had its own periodicity, in that it met regularly in March, July and October.

26. **The Chairperson** said that some committees specified periods for the submission of reports. The Committee against Torture, for example, stipulated that a report should be submitted every four years. The Human Rights Committee used to have a similar rule but had abandoned it in favour of the current, more flexible practice of submission within a period of three to six years.

27. **Mr. Fathalla**, after endorsing the comments by the previous speakers, said that the Committee should use the interactive dialogue with States parties to explain the advantages of the simplified procedure. Many States might not give due consideration to the secretariat's guidance note. Secondly, a consensus seemed to have emerged within the Committee that the simplified procedure should not be used for initial reports.

28. **Ms. Fox** (Secretary of the Committee) said that she did not know precisely how many States were eligible to apply for the simplified procedure, but she could look into the matter further. The number of States had increased since the Committee had considered the matter in 2010. As for the use of the resources saved, the cost savings had already been taken into account. On the question of the backlog mentioned by Ms. Majodina, the Bureau would look at the extra meeting time available to the Committee in 2015 and decide how to deal with the backlog and with the possible increase in lists of issues prior to reporting. It should be noted, however, that the backlog related mainly to communications; the backlog of reports was small and few had been received over the past year. The normal number expected was 17 per year. With regard to the point raised by Mr. Ben Achour, the periodicity of reports submitted to the Committee against Torture meant that it could plan in advance. It was more complicated for the Human Rights Committee, because no time limit was established until the Committee adopted its concluding observations. In response to Mr. Fathalla, she said that the secretariat sent letters to States annually and, if time limits were included as a matter of course in the concluding observations, it would be helpful for the secretariat.

29. **Mr. Ben Achour** said that, to save time, a limit could be imposed on speaking time for both delegations and task forces. States often repeated what they had already presented in written form. He suggested a time limit of five minutes.

30. **The Chairperson** said that the matter would be considered when the question of the constructive dialogue was discussed.

31. **Mr. Seetulsingh** suggested that the number of pages in a report should be limited; the statistics and figures given were often not relevant. In addition, core documents should be updated.

32. **The Chairperson** drew attention to General Assembly resolution 68/268, paragraph 16 of which limited the number of words to 31,800 for initial reports and 21,200 for periodic reports, while paragraph 3 referred to the updating of core documents. If the limits were not observed, conference services could not process documents properly. However, the matter was out of the Committee's hands. Clearly, it would be easier for a small island State to abide by the limit than for a large State.

33. **Mr. Iwasawa** said that the Committee's reporting guidelines, which had been revised as recently as 2010, were too detailed to be complied with, given the word limits for State party documentation. He did not, however, believe that further amendments were necessary, as the existing guidelines could still prove useful for reference purposes.

34. **Mr. Shany** said the suggestion that there was not a significant backlog of reports was misleading, as it only applied to States parties that had met their reporting deadlines. In the time it had available during the year the Committee would struggle to consider States parties in the absence of a report.

35. **Ms. Fox** (Secretary of the Committee) said that the consideration of States parties in the absence of a report would recommence in March 2015. In that connection, all non-reporting States parties had been sent a letter notifying them of the Committee's intention to examine their implementation of the Covenant in the absence of a report. In view of the complications involved in that approach, it was likely that only one non-reporting State would be considered per session.

36. **Mr. Walker** (Office of the United Nations High Commissioner for Human Rights) said that the simplified reporting procedure, which might entail the reallocation of resources from one department of the secretariat to another, would be completely reviewed in 2020.

37. **The Chairperson**, summarizing the debate, said there was consensus that all States parties submitting periodic reports should be invited to follow the simplified reporting procedure. There was, however, a reluctance to apply the procedure to initial reports. A root and branch review of the reporting guidelines was not urgent and should be left to a later date. In the meantime, the secretariat should advise the Committee on the modifications that were necessary in response to recent developments.

38. With reference to the allocation of working languages, he said that each Committee should make a decision every time its membership changed. It would be useful to know from the secretariat whether any request for a fourth official language would apply only to simultaneous interpreting or to the translation of documents as well. He pointed out that the Committee's rules of procedure would have to be revisited and brought into line with the provisions of General Assembly resolution 68/268.

39. **Mr. Salvioli**, supported by **Mr. Flinterman** and **Mr. Vardzelashvili**, referring to the time allotted to speakers during the constructive dialogue with States parties, said that the Committee should find a compromise between strict limits of the kind imposed by the Committee on the Elimination of Discrimination against Women and its own practice of allowing speakers themselves to decide. One solution would be to establish indicative time limits. In any event, it was important to ensure that Committee members had enough time to ask follow-up questions and that they used that time wisely, which was rarely the case at present. Opening statements by delegations should be subject to very strict time limits as they almost never contained substantive information.

40. **The Chairperson** said there was a general understanding among the treaty bodies that States parties should be given as much time to speak as Committee members. He would be willing to pilot a flexible practice of the sort proposed by Mr. Salvioli, but allowance should be made for the fact that, because of their complexity, some issues took longer to introduce than others. If the Committee decided to set different time limits for country rapporteurs and task force members, all confidentiality regarding their identities would be abandoned.

41. **Mr. Vardzelashvili** said that, if indicative time limits were introduced, the Committee's lists of issues would have to be drafted accordingly.

42. **The Chairperson** said he took it that there was no objection to reviewing the guidance note sent to States parties prior to the consideration of reports.

43. *It was so decided.*

44. **Mr. Fathalla**, referring to the possible appointment of a special rapporteur on reprisals, asked whether any other treaty bodies had such a rapporteur and, if so, what their experience had been.

45. **The Chairperson** said that they did. In the light of the strong condemnation of acts of intimidation and reprisals in paragraph 8 of General Assembly resolution 68/268, the treaty body chairpersons had agreed to develop and adopt a joint policy against reprisals.

46. **Mr. Flinterman** said that he was very much in favour of such an appointment.

47. **Mr. Bouzid** proposed that the role of special rapporteur on reprisals should be occupied by treaty body chairpersons.

48. **The Chairperson** said that, while he was not opposed to assuming that responsibility, the matter should be referred to the Bureau for further consideration.

49. **Mr. Rodríguez-Rescia** said that, bearing in mind the nature of the Committee's work, he was not sure whether the appointment of a special rapporteur on reprisals was justified. He proposed that the secretariat should conduct a study of the circumstances that might warrant such an appointment. If the office was created, it would perhaps be best suited to the Special Rapporteur on New Communications and Interim Measures.

50. **Mr. Walker** (Office of the United Nations High Commissioner for Human Rights) said that the Committee against Torture and the Committee on Enforced Disappearances had special rapporteurs on reprisals and would welcome the appointment of rapporteurs in other treaty bodies in order to share experiences. While there was not a particularly high workload involved, cases did arise in relation to both the reporting procedure and the communications procedure.

51. **The Chairperson** said that the Committee had as much reason to be concerned about intimidation and reprisals against members of civil society as any other treaty body. The question was therefore not whether a rapporteur should be appointed, but who it should be. The matter should be left in abeyance until the Bureau had considered it more fully.

The discussion covered in the summary recorded ended at 11.55 a.m.

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International Covenant on Civil and Political Rights

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Human Rights Committee
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Summary record of the 3078th meeting
Held at the Palais Wilson, Geneva, on Monday, 14 July 2014, at 3 p.m.

Chairperson: Sir Nigel Rodley

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Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Fourth periodic report of Ireland

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The meeting was called to order at 3 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Fourth periodic report of Ireland (CCPR/C/IRL/4; CCPR/C/IRL/Q/4; CCPR/C/IRL/Q/4/Add.1 and HRI/CORE/IRL/2014)

1. *At the invitation of the Chairperson, the members of the delegation of Ireland took places at the Committee table.*

2. **Ms. O'Brien** (Ireland) said that her country was proud to be a member of the Human Rights Council, actively participating in the universal periodic review process and having played an instrumental role in the United Nations treaty body strengthening process, notably by hosting the meeting which had resulted in the Dublin Statement of 2009.

3. **Ms. Fitzgerald** (Ireland) said that civil society consultations had been held in February and May 2012 and in June 2014 with a view to drafting the fourth periodic report and preparing for the present meeting. The Government was in the process of devising a series of measures to reform the functioning of the Garda Síochána Ombudsman Commission and to establish a Garda Síochána monitoring authority. The Irish Human Rights and Equality Commission bill was in the process of being enacted, following the adoption of several amendments designed to strengthen its financial and functional independence. The new body should be officially established in the autumn of 2014, in accordance with the Paris Principles.

4. The Gender Recognition bill, due for adoption by the end of the year, had been amended so that children aged 16 or 17 years as well as adults could, under certain conditions apply for gender recognition. The constitutional and legislative framework governing the right to abortion sought to strike a balance between the right to life of the unborn child and the rights of the mother, which reflected the nuances in national public opinion. The Protection of Life during Pregnancy Act of 2013 provided for abortion in cases of real and substantial risk to the life of the mother which could only be avoided by a termination of the pregnancy. Its provisions were in keeping with article 40.3.3 of the Constitution and the judgements of the Supreme Court and the European Court of Human Rights. A guidance document would shortly be published in order to assist health professionals with the implementation of the Act and to clarify the procedures set forth therein. The Government had established an ex gratia reparations scheme for survivors of symphysiotomy, in an effort to spare them the stress of legal proceedings. Victims would, however, continue to receive a range of social and medical benefits from the State. As for combating discrimination, a bill designed to strike a better balance between freedom of religion and the right to non-discrimination, particularly for the lesbian, gay, bisexual and transgender (LGBT) community, was to be adopted by the end of 2014, in direct response to the criticisms of article 37 of the Employment Equality Act of 1998 which allowed religious institutions to discriminate during the recruitment process. As planned, the Equality Tribunal and other bodies responsible for employment issues would soon merge into one agency, the Workplace Relations Service, which would subsequently take charge of complaints under the Equal Status Acts. That structural reform would not affect the exercise of the rights contained in the Acts. The Government had also decided to prepare a national plan for the implementation of the United Nations Guiding Principles on Business and Human Rights (A/HRC/17/31). As for gender equality, a task force had been established within the Department of Justice and Equality for the purpose of proposing amendments to article 41.2 of the Constitution regarding the role of women in the home. The task force was expected to report back to the Government by 31 October 2014 and a referendum would be held shortly thereafter. Legislative measures had been taken in 2010 and 2011 in order to ensure that children and their parents who were victims of domestic

violence received equal protection, whether the spouses were of the same or opposite sex, married or unmarried, or whether in a registered civil partnership or not. Guidelines concerning foreign victims of domestic violence whose immigration status was linked to that of their partner had also been published. In regard to the case of the Magdalen Laundries, the Government had accepted the findings of the McAleese report and the Taoiseac (Prime Minister) had apologized before Dáil Éireann (Lower House of Parliament) in February 2013. An ex gratia reparations scheme had been established and the Office of the Ombudsman would be responsible for handling appeals, in line with the recommendation of Mr. Justice John Quirke.

5. A bill designed to ensure, to the greatest extent possible, that no person was committed to prison for non-payment of fines or debts should be enacted in 2014. It notably provided for the use of attachment of earnings or community service orders. As for asylum, the Government remained committed to establishing a single application procedure in the area of international protection so as to simplify considerably the current system and reduce the length of time spent in "direct provision" centres. Since March 2014, the Department of Justice and Equality had been conducting an interdepartmental review of the national migrant integration strategy, which should be completed by 2015. In the particular case of the Roma community, the Government had accepted the findings of the report of the Ombudsman for Children concerning the case of two Roma children taken from their families and would take the necessary follow-up measures. The report made no mention of institutionalized ethnic profiling within the Irish police.

6. **The Chairperson** invited those members of the Committee who wished to do so to put questions to the delegation.

7. **Mr. Shany** welcomed the dialogue between the Government and civil society. Noting that, unlike the European Convention on Human Rights, the Covenant had not been incorporated in Irish domestic law and that its implementation fell outside the mandate of the new Human Rights and Equality Commission, he wished to know how consistent the current legislative framework was with article 2 of the Covenant and whether steps had been taken to implement the Committee's recommendations contained in paragraph 6 of its previous concluding observations (CCPR/C/IRL/CO/3). He would also like the delegation to provide examples of cases in which the provisions of the Covenant had been invoked and had actually made a difference to the judgements handed down. He questioned the adequacy of the budget allocated to the new Human Rights and Equality Commission and the fact that it had been determined by the Department of Justice and Equality, which seemed to negate the principle of financial independence. Would the new institution responsible for both equality and employment issues be able to handle cases relating to equality issues without undue delay, and did its personnel have the necessary expertise in international human rights law? Given that the State party no longer had an independent body to combat racism and poverty, it would be interesting to know which institutions would henceforth be responsible for such matters, the extent of their independence and whether the Government had considered adopting a national action plan against racism. He also wished to know whether the Irish corporations' overseas conduct which could result in violations of the Covenant were monitored to ensure compliance with the terms of export licences, whether civil society could submit information to the authorities on the matter and whether oversight mechanisms also monitored the provision of services outside the State party's territory. He asked the delegation to provide details of the proposed practical implementation of the United Nations Guiding Principles on Business and Human Rights and to comment on whether allegations of the complicity of Irish construction companies involved in preparations for the 2022 World Cup in Qatar in alleged human rights violations were being investigated.

8. Concerning the Protection of Life during Pregnancy Act of 2013, the delegation could perhaps provide further information on measures taken to evaluate the danger to the mother, particularly in regard to the numerous examinations required to establish a risk of suicide, and provide further clarification of the concept of "real and substantial risk". He also wished to know whether there had been any prosecutions under article 22 of the Act. He could see no impediment to clearer policy guidance for public prosecutors in that regard. He asked the delegation to comment on allegations that the Act created inequality between women who had the means to travel abroad to undergo an abortion and those who did not. Lastly, he wished to know what measures the Government intended to take on behalf of women who had undergone symphysiotomy and whether there were plans to open an inquiry into the practice.

9. **Ms. Chanet**, noting with satisfaction the State party's withdrawal of some of its reservations to the Covenant, urged the Government to take the necessary steps to ensure that minors were separated from adults and accused persons were segregated from convicted persons in places of detention, so that it would be in a position to also withdraw its reservation to article 10, paragraph 2. Recalling that the interpretation of article 20, paragraph 1, prohibiting propaganda for war, proposed in the Committee's general comment No. 34, was not rigid, there was nothing to stop the State party from withdrawing its reservation to that provision of the Covenant. Although it had not disputed the findings of the report of the McAleese Committee, which had been responsible for establishing the facts of State involvement in the case of the Magdalen Laundries, the Government had not accepted liability for the ill-treatment inflicted on the women who had worked in such institutions over the decades but had merely offered a public apology and established a scheme of payments and benefits on an ex gratia basis. The delegation might explain why the Government had refused to conduct an inquiry into the acts committed in those institutions. In regard to the new Fines (Payment and Recovery) bill due for adoption in 2014, it would be interesting to know why the bill, instead of completely prohibiting imprisonment for non-payment of debts pursuant to article 11 of the Covenant, merely sought to ensure, to "the greatest extent possible", that persons unable to pay their debts were not sent to prison. In the absence of a clear definition of terrorist acts in Irish legislation, it would be useful to know what acts had been the subject of the nine convictions mentioned in the State party's written replies to the list of issues, whether "subversive prisoners in the custody of the State" could be likened to terrorists, and whether the jurisdiction of the Special Criminal Court, responsible for prosecuting terrorism cases, was more concerned with acts of organized crime than terrorism.

10. **Mr. Iwasawa** invited the delegation to comment on the fact that, out of over 30,000 complaints submitted to the Garda Síochána Ombudsman Commission, only 40 had resulted in prosecutions. He would also like to know the measures taken by the State party to address the lack of police cooperation, which had undermined effective inquiries by the Ombudsman Commission, the substance of the planned changes to the mandate and functioning of the Ombudsman Commission, and the time frame envisaged by the State party for establishing an independent authority to monitor police action. Given the scant number of criminal proceedings connected with child abuse cases, he would like clarification of the criteria used when deciding whether to initiate an inquiry and prosecute such cases. It would also be interesting to know how many persons had been prosecuted following the publication of the report of the Commission to Inquire into Child Abuse (the Ryan report), whether the final progress report on the Ryan Implementation Plan, due in the first quarter of 2014, had been compiled, and what outcomes the State party expected from the plan. In regard to human trafficking, he invited the delegation to comment on claims that the period of recovery and reflection intended for victims was very rarely applied in practice and that it was difficult for asylum-seeking alleged victims of trafficking to obtain

a temporary residence permit, as provided for under the Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking.

11. **Mr. Vardzelashvili** asked whether the recent establishment of a task force to draft a proposed amendment to article 41.2 of the Constitution signalled the Government's intention to hold a referendum on the matter, and if so, whether such a referendum would focus solely on article 41.2 or on all of the issues considered by the Convention on the Constitution. It would also be interesting to know the outcome of the first triennial review of the implementation of the National Women's Strategy, due to have taken place at the beginning of 2012, particularly in regard to measures for reducing unemployment among women. The Convention on the Constitution had revealed that 55 per cent of mothers had a job, compared to 75 per cent of fathers, suggesting that more than a simple quota policy would be required in order to reduce gender inequality in terms of access to the labour market. It would therefore be useful to have details of the measures taken under the programme of positive actions for women's development, launched in 2012.

12. **Mr. Rodríguez-Rescia** requested information on the current status of the Assisted Decision Making (Capacity) bill before the Parliament. Although it represented an improvement on the current law regarding the rights of persons with disabilities, the bill nevertheless had some shortcomings in respect of articles 16 and 26 of the Covenant, in that it contained no provisions for the recognition everywhere of persons with disabilities before the law and their right to equal protection of the law. It would be interesting to hear the delegation's comments in that regard. As for public policy on domestic and gender-based violence, it would be useful to know whether there was a systematic process in place for collecting data on that form of violence and, if so, whether it included data disaggregated by the sex, age and ethnic origin of the victims and perpetrators. Statistics on the number of complaints, prosecutions and convictions relating to acts of violence against women, in particular migrant women, asylum seekers, refugees or women with disabilities would also be welcome. He invited the delegation to indicate whether the State party intended to amend the law so as to define domestic violence as a separate offence. Although there was no longer a requirement for unmarried couples to have lived together for a specific period before the partner who was a victim of violence could seek protection, other obstacles could impede access to protection, especially for foreign women whose immigration status was linked to that of their partners, as they must first apply for independent immigration status with the Irish Naturalization and Immigration Services. It would be interesting to know what steps had been taken to support women in those circumstances, such as the provision of free legal assistance so that they could prepare their cases. The State party had argued that article 28.3 of the Constitution was fully consistent with article 4 of the Covenant, however the two fundamental conditions that must be met pursuant to the latter for a state of emergency to be declared, namely that the situation must amount to a public emergency which threatened the life of the nation, and that the State party must have officially proclaimed a state of emergency, were not set forth in article 28.3 of the Constitution. It would therefore be interesting to hear the delegation's comments, specifically bearing in mind the Committee's general comment No. 29.

13. **The Chairperson** suggested briefly suspending the meeting to give the delegation time to prepare its replies to Committee members' questions.

The meeting was suspended at 4.30 p.m. and resumed at 4.55 p.m.

14. **Mr. Barrett** (Ireland) said that no follow-up had yet been given to the proposal to provide the Committee with a detailed account of how each Covenant right is protected by legislative or constitutional provisions, but there were plans to do so as soon as possible. The Law Reform Commission had started to consider how to incorporate international obligations into domestic law in 2013. Given the magnitude and complexity of the corpus of such obligations, that task would take time. The dualist legal system in Ireland in no way

impeded the observance and implementation of the rights set forth in the Covenant. Considerable progress had been made in terms of the courts' awareness and consideration of the Covenant obligations, notably owing to the Irish Human Rights Commission, which, by submitting amicus curiae briefs and calling judges' attention to the obligations under international instruments, had contributed to the gradual integration of those obligations into judges' practice. Information on the two cases in which the provisions of the Covenant had been cited could be forwarded to the Committee at a later date.

15. **Mr. White** (Ireland) said that, notwithstanding the paragraphs of the Committee's general comment No. 34 mentioned by Ms. Chanet, his country did not foresee withdrawing its reservation to article 20, paragraph 1, at the present time since, although the act of publicly justifying, denying or trivializing genocide, war crimes and crimes against humanity was not a separate offence, any act likely to disturb the peace or pose a risk to public order could be prosecuted as a criminal offence and all forms of incitement to hatred were punishable by the Prohibition of Incitement to Hatred Act.

16. **Mr. Ó Briain** (Ireland) said that the new Irish Human Rights and Equality Commission fully complied with the Paris Principles, both in respect of its mandate, structure and independence and the transparency of its membership selection process. In keeping with the principle of separation of powers, it could not exercise legislative or judicial functions, but its mandate was broad enough for it to be able to ensure compliance with legislation and promote new international human rights standards. As for its annual budget, a proportion of the €2 million accorded to it in 2014 had been granted for the purpose of constructing its new premises and would therefore not be continued. The amount of funds to be allocated to the Commission in 2015 had yet to be decided. The proposed merger of the Labour Court, Labour Relations Commission, Employee Appeals Tribunal, National Employment Rights Authority and Equality Tribunal into one agency was intended to simplify the institutional framework and thus facilitate the complaints procedure. The new institution would retain the expertise of Equality Tribunal personnel, who would be redeployed once the new institution became operational. The mandates of the National Consultative Committee on Racism and Interculturalism and the Combat Poverty Agency had been entrusted to the Office for the Promotion of Migrant Integration and the Department of Social Protection respectively, which conducted their activities within the framework of their own programmes.

17. **Ms. Fitzgerald** (Ireland) said that her Government had launched an ambitious programme of reforms in a concerted effort to restore public confidence in police monitoring measures, which should be completed in the coming months. A bill to extend the powers of the current monitoring body, the Garda Síochána Ombudsman Commission, had recently been drafted and the new oversight body should assume its functions by the end of 2014. New protocols had also been devised in order to strengthen cooperation and exchange of information between the police and the Ombudsman Commission.

18. **Mr. Wrafter** (Ireland) said that, in an attempt to prevent human rights abuses by Irish companies operating abroad, his Government had decided on 24 June 2014 to devise a national plan for the implementation of the United Nations Guiding Principles on Business and Human Rights, which would be prepared by the relevant ministries following consultations with representatives of the Irish Human Rights and Equality Commission, businesses, trade unions, civil society and universities. The Government shared the Committee's concerns regarding the situation facing foreign workers on building sites in Qatar. During a recent visit to the country, the Minister of Trade and Development had voiced his concerns to the Qatari authorities in respect of the working conditions of those workers and the human rights violations committed against them. Several Irish companies were currently operating in Qatar, but the delegation had received no information to

indicate that one or more of them had been involved in violations of workers' rights, as some sources alleged.

19. **Mr. Hickey** (Ireland) said that the task force responsible for drafting a proposed amendment to article 41.2 of the Constitution would submit its report by the end of October 2014, at the latest, following which the Government would hold a referendum on the matter. The results of the review of the National Women's Strategy and the conclusions of the subcommittee responsible for examining the issues surrounding the low representation of women in political life and the public and private sector would be published shortly. The funds received from the European Union PROGRESS Programme had been used to finance training programmes designed to prepare women for senior positions in the public and private sector.

20. **Ms. Fitzgerald** (Ireland) said that her Government intended to increase women's representation in public bodies to 40 per cent. The results of the monitoring scheme for the implementation of the National Women's Strategy had shown that progress made varied widely from one sector to another. Targeted efforts would henceforth be deployed in areas that had failed to record a sufficient increase in women's representation.

21. **Mr. Ó Briain** (Ireland) said that the overall aim of the Assisted Decision Making (Capacity) bill was to guarantee the right to independent living of persons with disabilities. That area of law was constantly evolving: consultations had been held in spring 2014 in order to refine the bill and align it with the provisions of the Convention on the Rights of Persons with Disabilities and the European Convention on Human Rights. The draft amendments, which provided, in particular, for the inclusion of provisions on access to legal aid and the repeal of the Lunacy Regulations Act of 1871, were in the process of being drafted and the final version of the bill should be adopted before the end of 2014.

22. **Ms. Fitzgerald** (Ireland) said that the National Office for the Prevention of Domestic, Sexual and Gender-based Violence of the Department of Justice and Equality had put data collection at the centre of the National Strategy on Domestic, Sexual and Gender-based Violence. Considerable work remained to be done to evaluate the effectiveness of the services designed to prevent and combat such violence and support victims. As a result of the legislative amendments, persons subjected to violence by their partners could request a restraining order after only six months of cohabitation. Ireland intended to ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence and, in that context, would devise new legislation to combat domestic violence, taking into account best practices in that area. An independent Garda Síochána inspection body was in the process of preparing a report on police handling of cases of domestic and gender-based violence. Practices had improved significantly in that area, but much work remained to be done. As for the case of the Magdalen Laundries, the Government had accepted the findings of the McAleese report and had implemented the recommendations contained in the report of Mr. Justice John Quirke by establishing an ex gratia reparations scheme, which was currently being implemented. In June 2014, the authorities had received a total of 750 requests for compensation and had made 346 payments totalling €12.4 million. Furthermore, a bill ensuring access to medical services for women who had been placed in such institutions was being developed and should be adopted before the end of 2014. The Government also intended to establish an independent commission of inquiry to investigate the case of the mass grave containing the remains of several hundred children discovered in a mother and baby home and to review the situation in other religious institutions that took in young single mothers. Lastly, the recommendations of the Ryan report were being implemented and the monitoring report on the Ryan Implementation Plan had been compiled by a group composed of representatives of civil society and relevant ministries and should be submitted shortly.

23. **Mr. Ó Briain** (Ireland) reiterated, in regard to questions concerning derogations from article 4 of the Covenant, that article 28.3 of the Constitution did not exempt Ireland from its human rights obligations and that measures previously adopted under that article had been proportionate to the threat faced by the State. No measures taken at those times had led to discrimination based exclusively on race, colour, sex, language, religion or social origin and no derogations had been permitted from articles 6, 7, 8 (paras. 1 and 2), 11, 15, 16 and 18. Ireland had not violated any of the prohibitions enshrined in the Covenant; hence there was no reason to amend the Constitution in force.

24. **Ms. Jackson** (Ireland) said that domestic law had evolved gradually in respect of abortion and that a fair balance had been struck in the Protection of Life during Pregnancy Act of 2013 between the fundamental rights of the unborn child and those of the mother. The Act had been the result of extensive consultations with representatives of public bodies and NGOs and reflected the will of the people.

25. **Mr. O'Sullivan** (Ireland) explained that the paucity of persons benefiting from a period of recovery and reflection had been due to the small percentage of suspected victims of trafficking who required a residence permit. The granting of such a permit was not conditional on the victim's active cooperation with the police: humanitarian or other reasons could also be cited by the authorities in a concerted attempt to ensure that residence permits were granted to all victims of trafficking and domestic violence who needed them.

26. **Ms. Fitzgerald** (Ireland) said that the number of persons detained for non-payment of fines had decreased substantially between 2007 and 2013 and that the Fines (Payment and Recovery) bill due for adoption in 2014 would be examined in the light of the Committee's comments on the issue.

27. **Mr. Hickey** (Ireland) said that, for the reasons outlined in the written replies, his Government had considered it unnecessary to incorporate a definition of terrorism in criminal legislation and that the presence of "dissident" paramilitary groups in the country necessitated the continued existence of the Special Criminal Court. He noted, however, that the Supreme Court had ruled in a recent decision that in the event of the Director of Public Prosecutions entrusting a case to the Special Criminal Court rather than an ordinary court, his or her decision must be substantiated and was subject to appeal. Some offences related to organized crime were considered by the Special Criminal Court, as jurors in those types of cases were sometimes subjected to intimidation.

28. **The Chairperson** thanked the delegation and invited it to resume its replies to the questions raised by the Committee members at the next meeting.

The meeting rose at 6 p.m.

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Summary record of the 3079th meeting
Held at the Palais Wilson, Geneva, on Tuesday, 15 July 2014, at 10 a.m.

Chairperson: Sir Nigel Rodley

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Fourth periodic report of Ireland (continued)

This record is subject to correction.

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The meeting was called to order at 10 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Fourth periodic report of Ireland (continued) (CCPR/C/IRL/4; CCPR/C/IRL/Q/4 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Ireland took places at the Committee table.*

2. **Ms. Jackson** (Ireland) said that two independent reviews had been carried out on symphysiotomy, the first focusing on the historical facts, including information from hospitals and consultation with women affected and their families, and the second, conducted by a judge, involving a review of the legal issues. Symphysiotomy had been an exceptional intervention in Irish obstetrics, performed in less than 0.05 per cent of deliveries between 1940 and 1985. Some 1,500 women had been affected, of whom 350 were alive today. The main reason for performing symphysiotomy had been to achieve the predominant goal of vaginal delivery and avoid Caesarean section in the case of minor to moderate obstruction. At the time, there had been concerns about the rise in the number of Caesarean deliveries and the risks associated with multiple Caesarean sections. According to statistics from the 1960s, the maternal mortality rate had been lower with symphysiotomy than with Caesarean delivery.

3. The Government had decided to establish an ex gratia scheme, under which the State did not recognize any liability or legal obligation, as it would be extremely difficult to determine the State's liability in law in relation to each symphysiotomy. Implementation of the scheme would cost approximately 34 million euro. The compensation received by the women would be less than court awards to reflect the non-adversarial nature of the scheme. Most importantly, women would be spared the stress and potential cost of having to pursue High Court cases, bearing in mind that a number of them had poor access to their records because of the time delay and many were now aged between 75 and 91. The Government felt that the scheme was fair and responded well to the needs of the women affected.

4. **Ms. Fitzgerald** (Ireland) said the Government acknowledged that the symphysiotomy issue was extremely distressing for the women involved and profoundly regretted the very serious and damaging effects, including medical and psychological problems, the practice had had on them and their families. The Government was hopeful that the announcement of the redress scheme would help give the women closure. By today's standards of care, symphysiotomy would certainly not be indicated, but maternal care and obstetrics had been in a transitional phase in Ireland at that time and there had been a lack of oversight. The practice had not been carried out secretly. In the case of symphysiotomies carried out after the baby had already been delivered by Caesarean section, the Government strongly supported the Supreme Court position that the procedure was indefensible and wrong. The details of the redress scheme would be finalized over the coming weeks, and the Government was open to hearing the views of the various groups representing the women affected on how best to operate it.

5. **Mr. O'Briain** (Ireland), referring to the reservation under article 10, paragraph 2, of the Covenant, said that the Government did not have any objection in principle to lifting the reservation but must first ensure that it was in a position to guarantee the separation of prisoners in practice. A substantial programme of work was nearing completion to bring the poor stock of prison accommodation that had been inherited up to standard, and a new prison in Cork was due to be opened by the end of the year.

6. With regard to the reservation to article 20, paragraph 1, the difficulty in the past had been drafting a clear offence that would meet international standards. The Government

would reconsider the formulation of an offence during the 2014 review of its compliance with the European Union Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law.

7. **Mr. Hickey** (Ireland) said that 18 persons had been convicted by the Special Criminal Court in 2012 for offences such as membership of an illegal organization, possession of firearms and murder.

8. **Mr. O'Briain** (Ireland) said that the Government fully subscribed to the principle of strong engagement between national human rights institutions and national parliaments. The bill establishing the Irish Human Rights and Equality Commission provided that the new institution should have a direct reporting relationship with Parliament, but as Parliament made its own internal rules through standing orders, it was its prerogative how to deal with those reports. It was hoped that the committee responsible for the rules and procedures of Parliament would provide for a commitment to engage with the Commission.

9. **Ms. Fitzgerald** (Ireland) said that it was normal practice for a body such as the Commission to discuss its reports with the parliamentary Joint Committee on Justice, Defence and Equality Justice, and the Government expected such engagement to continue in the coming years.

10. **Mr. Vardzelashvili** asked the delegation to provide further information on the work of the task force established to prepare for a referendum on the amendment of article 41.2 of the Constitution on the role of women.

11. In relation to question 13 of the list of issues, he asked whether the new prison was intended to replace the existing facility in Cork and how many low-risk prisoners were to be released under the Unlocking Community Alternatives strategy. He asked the delegation to comment on the fact that the vast majority of prisoners were serving sentences for minor offences punishable by terms of up to 1 year. He enquired what was being done to address and prevent inter-prisoner violence, and what statutory time limits applied to pretrial detention. Was the estimate by the Inspector of Prisons that the practice of "slopping out" would be abolished in all prisons by mid-2016 realistic and when would the separation of different categories of prisoners be guaranteed in all facilities?

12. In relation to question 16, he noted that one of the two exceptions to the requirement under the Criminal Justice Act that questioning of a detainee must not start until they had had access to legal advice was the existence of compelling circumstances. He asked the delegation to comment on how compelling circumstances had been defined in case law and on the recent ruling by the Supreme Court that statements made by a suspect following his request for a solicitor but before that solicitor had arrived were inadmissible.

13. With regard to question 27, he asked whether the Government had given a formal response to the recommendation by the Constitutional Convention that the constitutional offence of blasphemy should be removed.

14. **Ms. Chanet** said that the State party's consistent position in relation to the Magdalene laundries was not entirely satisfactory in terms of implementation of the Covenant. As to the difficulties in defining the offence of hate speech, she suggested that the State party might base itself on the practice of other European countries. On the issue of corporal punishment, she noted with surprise that only mothers had been surveyed in the research on discipline strategies. Given that the State party had been recommended by various human rights bodies to legislate on corporal punishment, she wondered whether it intended to do so.

15. **Mr. Shany** said the fact that Ireland was a dualist State and that international treaties were thus not part of domestic law unless incorporated by Parliament did not justify not giving the new Human Rights and Equality Commission a mandate to monitor compliance

with the Covenant and other international treaties. The exclusion of the Covenant from the mandate of the Commission limited the ability of the State to provide effective remedies for certain violations of the Covenant through that channel. As to the country's dualist nature precluding the Commission from investigating violations of non-incorporated human rights, he appreciated that non-incorporation might limit the possibility of providing legal redress, but it should not prevent the Commission from fully functioning in ways that involved non-remedial powers.

16. Referring to question 12 on abortion, he expressed serious concern at the claim that the free will of the Irish electorate could, by virtue of article 25 of the Covenant, allow the Irish State to violate other provisions of the Covenant, including non-derogable provisions such as articles 6 and 7. That argument was, in his view, completely unacceptable and struck at the very core of human rights law as a safeguard against the tyranny of the majority. He called on the delegation to consider withdrawing that statement. Regarding symphysiotomy, while he appreciated the strong condemnation of the practice, he expressed concern that women must waive judicial remedies as a precondition for entering the scheme before the level of compensation had been determined, at the lack of judicial review of the outcome of the scheme, and at the lack of assessment within the scheme of individual hardships and injuries suffered.

17. On question 18, he asked whether the new information brought into the public domain by WikiLeaks, which included further evidence of Ireland's involvement in rendition flights, had been duly investigated and, if so, requested details. On the issue of religious oaths, he commended the State party for its willingness to take measures to implement the Committee's recommendation, but expressed concern at the slowness of its action. He asked the delegation to provide clarification on the issue and whether any anticipated changes would also include other senior office holders, such as the President and the Attorney General.

18. With regard to non-denominational schools, he again expressed concern at the pace of change. The number of non-denominational schools was still minuscule, and most new schools were in fact multi-denominational rather than non-denominational. He asked the delegation to explain what would be the fate of the children of non-Christian and atheist families in areas in which it had been deemed that there was insufficient demand and in non-surveyed rural areas. Was it true that the children of non-Christian or atheist families could be discriminated against in admission to denominational schools? How was the State party planning to deal with the possibility of demand for non-denominational education in the future? The Committee would welcome a copy of the new Employment Equality Bill and invited the delegation to address concerns that, although it would protect certain groups such as LGBT teachers, it would not prohibit discrimination on the basis of religious conviction and thus would not protect the rights of non-Christian teachers.

19. **Mr. Rodríguez-Rescia**, referring to question 11 of the list of issues, said that article 28.3 of the Constitution should define in greater detail the prerequisites for declaring a state of emergency and suspending fundamental rights, in accordance with article 4 of the Covenant. He asked the delegation to comment in detail on that issue.

20. With regard to question 19, he asked the delegation to clarify what was understood by the term "voluntary patient" in the light of the concerns expressed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment that many so-called "voluntary" patients were in reality deprived of their liberty and housed in closed units. Good practices should be established to ensure the treatment of voluntary patients in line with the Convention on the Rights of Persons with Disabilities. He asked what the significant reduction in the number of voluntary admissions was attributable to. Was a policy of deinsitutionalization being implemented? He invited the delegation to comment on the reasons for that increase in the use of physical restraint

and why so few facilities were fully compliant with the code of practice on physical restraint. Why were advance directives for psychiatric care not being used and why was the administration of electroconvulsive therapy against a patient's will not prohibited under the Mental Health Act?

21. He asked what measures had been adopted to recognize Travellers as an ethnic minority and to support their nomadic or semi-nomadic way of life. There had already been calls by several committees and the universal periodic review process for the State party to recognize Travellers as a minority group. The higher rates of infant mortality and suicide among the Traveller community indicated the need for a public policy that set out differentiated and affirmative action. Both the Traveller and the Roma communities faced stigmatization and inadequate access to public services. The lack of political participation of members of the Roma community was of particular concern. Had the State party implemented a plan, in accordance with the recommendation by the Committee on the Elimination of Racial Discrimination, to improve the political participation of minority groups? And what policies were in place at local, regional and national levels in that regard?

22. **Mr. Iwasawa** emphasized that arguments to justify deviation from human rights under the Covenant by invoking article 25 were unacceptable. Given that Ireland was the only European Union member not to have a single application procedure for asylum cases, he welcomed the Immigration, Residence and Protection Bill and asked whether it was expected to be enacted in 2014. What was the status of the plan to establish an independent appeals process to review immigration-related decisions? Direct provision centres were unsuitable for long stays as they impeded family life, were not in the best interests of children, contributed to isolation and prevented integration. What measures were being taken to respond to the Committee's recommendation to consider an alternative system that provided adequate living conditions? Since asylum seekers did not fall under the remit of the Office of the Ombudsman, what was the State party doing to establish an independent complaints or monitoring mechanism for persons living in direct provision centres?

23. While welcoming the introduction of the Gender Recognition Bill, he regretted its delayed enactment because the lack of a birth certificate, for which a gender identity was required, prevented access to social services. He asked how the State party would (a) redress the excessive requirements, including parental consent, court orders and doctors' validation, for persons aged 16 or 17 who wished to apply for gender recognition, (b) rectify the preclusion for transgendered persons in an existing marriage or partnership from accessing gender recognition, (c) break down discriminatory attitudes against transgender persons, and (d) ensure prosecution of crimes committed against them. To what extent was the acquired gender of transgendered persons taken into account when assigning them to a detention facility?

24. **Mr. Flinterman** expressed concern at legislation on abortion. He asked whether the Irish people had ever been given the opportunity to vote on relevant provisions in the Constitution to render them less restrictive. Given that recent opinion polls showed that, while a majority of the population supported abortion in certain urgent cases, the majority were not in favour of abortion as a matter of choice, how much importance did the State party attach to opinion polls? The replies to the list of issues disregarded the situation of women, the myriad conditions which led to abortion, and article 7 of the Covenant. He asked how provisions subjecting women who sought abortion because of health risks or rape to 14 years' imprisonment, or authorizing women to seek legal abortion abroad could be interpreted as fair and in conformity with the Covenant.

25. **The Chairperson** asked whether the State party acknowledged the social discrimination against women inherent in the provision permitting them to seek abortion abroad. He asked whether it was true that the women involved in the historical

symphysiotomy cases had not been consulted and had not given consent, and whether it was generally accepted that those cases had been part of an experimental process.

The meeting was suspended at 11.25 a.m. and resumed at 11.50 a.m.

26. **Ms. Fitzgerald** (Ireland) said that recent data had shown a decrease in the prison population in the State party. In-cell sanitation had been installed in all cells in Mountjoy prison and refurbishment was under way. Construction work had commenced on Cork prison, in accordance with international standards, and remained to be done on Limerick and Portlaoise prisons. It was expected that all projects would be completed within their scheduled time frames.

27. The figures on prisoners contained in the report included 540 prisoners on remand. Efforts were being made to ensure segregation within the prison system. Cloverhill prison was a dedicated remand prison. Practical difficulties in ensuring segregation sometimes arose, particularly where remand prisoners asked to stay near their hometowns. A budget of 50 million euro had been allocated to the construction of a centre for young offenders. All 16-year-old offenders had been segregated and 17-year-olds had been moved to a separate part of an adult facility. It was expected that by the end of 2014 there would be complete segregation of young offenders and adult prisoners.

28. **Mr. Barrett** (Ireland) said that a Supreme Court decision had recently been taken on the right to access to counsel before and during police interrogation and the right of a detainee not to be questioned before he or she had access to legal advice. Those rights supplemented existing statutory rights of arrested suspects to be informed of their rights. A recent report by the Garda Síochána Ombudsman Commission had set out recommendations on the way in which the obligations of the officer in charge at the time of an arrest should be expanded. Discussions had been held on the development of protocols concerning interaction between the police, lawyers and suspects. It was not yet clear whether those protocols would require statutory backing.

29. **Ms. Fitzgerald** (Ireland) said that a robust framework had been set up to respond to the historical cases of child abuse, which included strengthening legislation and improving children's services to ensure a speedier and more coordinated response to child abuse concerns. The reform of children's services had also involved the establishment of the Child and Family Agency in January 2014. The possibility of banning corporal punishment was under discussion. The Children Act nevertheless provided clear legal deterrents against assaults on children in any setting and offenders had been prosecuted under that Act. A suite of legislation covering the reporting of abuse had also been drawn up. Various measures to assist parents and families were in place, such as the Family Support Agency, which provided services to improve the functioning of family units and was heavily utilized. A research paper by the Economic and Social Research Institute had revealed a shift in attitudes and a fall in the numbers of primary caregivers resorting to smacking as a discipline strategy.

30. **Mr. White** (Ireland) said that the use of the State party's territory or airspace for the purpose of extraordinary rendition, torture or unauthorized detention was prohibited. The new information brought into the public domain regarding allegations of the use of Irish airports for such practices did not bring new evidence to light. Following investigations into such complaints, all allegations had been disproved.

31. **Ms. Jackson** (Ireland) said that the current review of the Mental Health Act would address the definition of voluntary detention or voluntary patients. The review would also recommend amending legislation on electroconvulsive therapy to prohibit its administration to patients capable of giving consent but unwilling to do so, and to provide greater protection for patients for whom that treatment was being considered. Admissions of voluntary patients notified to the Mental Health Commission had increased to 567 in 2012.

32. **Mr. O'Sullivan** (Ireland) said that the scale of the Immigration, Residence and Protection Bill had contributed to the delay in its enactment. The future Act would include the establishment of an independent appeals procedure. In addition, a separate protection bill concerning a single application procedure for asylum seekers was being designed to ensure efficient implementation of that procedure. Reforms of the immigration procedures were continuing in the interests of efficiency and transparency.

33. **Mr. Dowling** (Ireland) said that the revised House Rules and Procedures contained the complaints mechanism for asylum seeker residents and staff in direct provision centres. The procedure was based on the obligations placed on the Reception and Integration Agency, management and residents, and included an appeals process. Reviews of the House Rules and Procedures were carried out by a group composed of, inter alia, an independent chairperson, NGOs, and representatives of the police and the health sector. While the Office of the Ombudsman currently did not have the power to investigate asylum-related matters, administrative arrangements in place with the Reception and Integration Agency and the Irish Naturalisation and Immigration Service empowered it to provide assistance in such cases. Asylum seekers had access to mental health services on an equal footing with Irish nationals. In addition, the law entitled resident asylum seekers to English-language tuition and guaranteed children of such asylum seekers education in local schools and up to university level.

34. As for the right to family life, asylum seekers obviously wished to live in a community and have the right to work and housing, but it was not financially practicable for the Irish State to meet those wishes. All the alternatives had been considered and no solution had been found that would not entail excessive costs. Asylum seekers had their basic needs provided for, including housing, heating, lighting, food, health care and education, so their financial situation was similar to that of other low-income families.

35. **Mr. O'Briain** (Ireland) said that the reason why legislation on lesbian, gay, bisexual and transgender (LGBT) persons was taking so long to be finalized was that a consultation process had been conducted concerning amendments relating to persons aged 16 or 17. That process had identified improvements, such as greater involvement of the children's parents and the medical profession. As to segregation in custody, the matter was a priority for the authorities, even if failures sometimes occurred. An NGO, the Gay and Lesbian Equality Network, had a good working relationship with the police, who tried to ensure that LGBT persons felt safe reporting assaults or other offences against them.

36. In asking about the Irish Human Rights and Equality Commission, Mr. Shany had given the impression that he would wish to see the incorporation of the Covenant into Irish law by means other than legislation. The Irish Supreme Court did not, however, allow Parliament unlawfully to delegate its powers to ministers or anyone else. It would be unconstitutional, therefore, to give the Commission the power to behave as if the Covenant had been incorporated. Nor could the Commission make the law or initiate enforcement action in cases of the violation of international human rights standards. Once it was involved in a particular court case or inquiry, however, there was no restriction on the advice it could give.

37. With regard to the freedom of religion and the judicial oath, he could add little to the delegation's written replies. A constitutional referendum would be needed to amend the current rule. The Government had approved the consideration of an amendment to the Constitution to permit a secular declaration for a person appointed to the judiciary, but he could not say when action would be taken.

38. **Ms. de Cogan Chin** (Ireland) said that, in accordance with section 6 (a) of the Education Act 1998, the Government aimed to provide a diverse system catering for children of all religions. In 2013, seven new multidenominational primary schools had been opened and four more would be opened in 2014. In areas of stable population, where there was evidence of a demand for different types of patronage, existing schools could be

stripped of their patronage and made multidenominational. Out of 43 areas where requests of that nature had been made, such a course of action had been approved in 28. Agreement had been reached with Roman Catholic patrons on the opening of three new multidenominational schools in September 2014. Discussions with the existing patrons had been positive and more schools would be opened. Under article 44 of the Constitution, parents could withdraw their children from religious education and schools could put in place alternative arrangements. With regard to school admissions, she said that the Education (Admissions to Schools) Bill aimed to make the process fair and transparent.

39. **Ms. Fitzgerald** (Ireland) said, with reference to article 27 of the Covenant, that the Government was considering a referendum on article 40.6.1 (i) of the Constitution. Parliament was currently considering the recommendation of the Convention on the Constitution. It had already repealed the Defamation Act 1961.

40. In relation to question 12 of the list of issues, the Government recognized that, as pointed out by **Mr. Shany**, **Mr. Iwasawa** and **Mr. Flinterman**, the majority will could not derogate from the country's human rights obligations. With regard to Mr. Flinterman's question, the previous referendum, conducted in 2002, had been more restricted in scope, dealing only with the question of removing the threat of suicide as grounds for abortion. Another referendum would be required before broader provisions could be introduced. The Protection of Life During Pregnancy Act 2013 finally provided clarity for both the medical profession and women. It had been the result of wide and informed discussion, and many civil society groups had contributed. Opinion polls indicated that views were changing on some aspects of the question. There existed a number of agencies that provided information for women experiencing a crisis pregnancy. The number of teenage crisis pregnancies had diminished greatly in recent years, as had the number of women travelling abroad for abortions.

41. **Ms. Jackson** said that the reason why women at risk of suicide were examined by three doctors was that assessment was difficult. The law did not specify that the three doctors must carry out the assessment together or in the same location. Women in such a situation must be given truthful and objective information in a counselling environment and be informed of the options available, whether to keep the baby, give it up for adoption or terminate the pregnancy. The website of the Health Service Executive gave a list of agencies that provided help. As to the fact that women with resources could travel abroad while those without resources could not, that was an intractable fact. The Covenant underpinned the debate and decision-making in the Department of Health.

42. **Mr. Hickey** (Ireland), referring to the question whether Travellers should be recognized as an ethnic minority, said that his delegation was aware that the former Minister of Justice had committed the Government to considering the issue in 2011 and a conference had been held to discuss its every aspect. The implications had been discussed with other Government departments and the law officers, and a joint committee of the Oireachtas had issued a report, which the Minister would take into consideration in reaching her decision. Meanwhile, Travellers had the same rights as other Irish citizens. The Government recognized that Travellers needed protection and they were therefore named in all the country's anti-discrimination legislation, but, ultimately, recognizing them as a minority would give them no more rights than they currently enjoyed. The Roma, on the other hand, were mostly European Union nationals who had come freely to Ireland, so were not registered or counted separately. Their estimated numbers were 3,000 to 5,000. A need had been identified to provide them with support and advocacy services, and the State itself needed to learn how to deal with the Roma and other minority communities. With regard to the question from Mr. Vardzelashvili, he confirmed that the Government was considering language to replace the current wording of article 41.2 of the Constitution; the task force on the matter would report by October 2014 and a referendum would be held as soon as possible.

43. **Ms. Fitzgerald** (Ireland) said, with regard to the question of symphysiotomy, that the procedure had generally — although not always — been carried out without the knowledge or consent of the women concerned. It should, however, be put in a historical context since, in the past, it had been considered a life-saving procedure. It had also been used for emergency labours. The precise details of the redress scheme were still under discussion, but the investigative process should not be intrusive or cause additional stress to the women concerned.

44. **Mr. Shany**, after thanking the delegation for its unequivocal reply concerning article 25 of the Covenant, asked it to explain how it was compatible with the Covenant to allow schools with a near-monopoly to discriminate openly against children on the basis of their parents' religious convictions. Did the State party consider itself obliged to provide a neutral environment at school, outside religious instruction classes?

45. **Mr. Vardzelashvili** asked whether the State party would consider reviewing the mechanism for complaints in prisons relating to inter-prisoner or other violence or ill-treatment, and extending category A complaints to cover category B complaints concerning such issues as discrimination, verbal abuse or inappropriate search.

46. **Mr. Zlătescu** said that the exposure of Travellers and the Roma to marginalization and racism in Ireland had been exacerbated by the closure of the National Consultative Committee on Racism and Interculturalism in 2008. He asked whether the Government had plans to reinstate the Committee.

47. **Ms. Fitzgerald** (Ireland) said that her Government took its engagement with the Human Rights Committee very seriously. The Government had a reform agenda and progress had been made in many areas. It was helpful to gain an international perspective, particularly for women in Ireland. She paid tribute to NGOs, which played an important part in influencing public opinion. With regard to the last three questions, the Government would respond to the first in writing. Consideration would be given to extending the category A complaints procedure to category B complaints. As to the question about Travellers and the Roma, the Government was conscious of the inequalities they faced, but it wished to be sure that the best possible mechanism was put in place. An interdepartmental group had been established and meetings held with NGOs to find a way to focus more closely on their difficulties.

48. **The Chairperson** said that the dialogue with the delegation had indeed been constructive. He recognized that human rights were very much a part of the discourse and history of Ireland. There had been positive developments in a number of areas, one example being the assisted decision-making for persons with mental disabilities. He also noted the improvements to the Special Criminal Court, even if some members of the Committee questioned the need for its continued existence. At least there had been an end to the practice whereby the prosecution determined which court an individual was tried in, without the possibility of challenge. There had also been improvements in prison stock, where conditions had formerly been close to inhuman.

49. Many social issues remained, however, such as the Magdalene laundries, the mother-and-baby homes, child abuse and symphysiotomy, which he could hardly imagine any State party tolerating over the many years that they had existed. All the issues were connected with the belief system that had long predominated in the State party. The previous day, the Committee had heard a statement from an NGO which had shown breathtaking arrogance in its certainty as to the meaning of the right to life and he welcomed the greater openness of the delegation. The primary right to life was surely that of the woman concerned. The situation had been clarified with the adoption of the Protection of Life During Pregnancy Act 2013, but it was a pity that the Act did not cover the right to health of women or eliminate the risk of criminal penalties for abortion, even in the case of rape, where a woman had no responsibility for the child she bore. He hoped that, by the time of the next periodic report, consultations would have been held with a

consequent constitutional change, bringing the law into line with the Covenant. The law should also be brought into line with article 7 of the Covenant, which specified that no one should be subjected without their consent to medical or scientific experimentation. He expressed concern that, although the Government was prepared to make a material response to abuses, none of the statements from the delegation had acknowledged the State's accountability for its own actions or its failure to monitor the actions of others in committing abuses that might well be characterized as crimes.

The meeting rose at 1.10 p.m.

United Nations CCPR/C/SR.3080

International Covenant on Civil and Political Rights

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Human Rights Committee
111th session

Summary record of the 3080th meeting
Held at the Palais Wilson, Geneva, on Tuesday, 15 July 2014, at 3 p.m.

Chairperson: Sir Nigel Rodley

Contents

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Sixth periodic report of Japan

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of this document* to the Editing Section, room E.5108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

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The meeting was called to order at 3.05 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Sixth periodic report of Japan (CCPR/C/JPN/6, CCPR/C/JPN/Q/6, CCPR/C/JPN/Q/6/Add.1 and HRI/CORE/JPN/2012)

1. *At the invitation of the Chairperson, the delegation of Japan took places at the Committee table.*

2. **Mr. Okada** (Japan) said that the report had been prepared with the assistance of several ministries and government agencies and of numerous civil society organizations whose views had been canvassed with interest through the website of the Ministry of Foreign Affairs and through consultations. Since the submission of the report the Government had continued to strive actively to promote and protect human rights. Pursuant to the undertaking given in 2013 before the General Assembly of the United Nations, Japan had embarked upon a growth strategy centring on the promotion of women's active participation in society and in the economy and aimed, inter alia, at boosting the proportion of women in leadership positions to 30 per cent by 2020 and, more generally, at enabling all women to achieve their full potential. The Government was endeavouring actively to combat all forms of violence against women in accordance with the Act on the Prevention of Spousal Violence and the Protection of Victims, as revised in 2013.

3. On 20 January 2014 Japan had become the 141st State party to the Convention on the Rights of Persons with Disabilities, thus bolstering its commitment to the fulfilment of those persons' rights. The legislative measures adopted in that sphere included the Revised Act on Mental Health and Welfare of Persons with Mental Disorders, which had entered into force in April 2014 and which provided for the formulation of guidelines defining the direction of mental health services, facilitating the discharging of patients from hospitals and strengthening the role of the Mental Health Service Council which was responsible for appraising the validity of involuntary hospitalization. The implementation of the Act would be assessed after three years, at which point stock would be taken of the results in order to define such additional measures as might be appropriate to improve the situation of persons with mental disability.

4. Substantial progress had been made with regard to the rights of children born out of wedlock. Provided they had been recognized by their father, those children could obtain Japanese nationality without any need for their parents to be married and they had the same rights of inheritance as children born in wedlock. The Civil Code and the Child Welfare Act had been revised in order to give children greater protection against violence. In 2010 and 2011, pursuant to the Action Plan to Combat Trafficking in Persons, the Government had devised guidelines for the means of identifying and protecting victims. An interministerial liaison committee met regularly to ensure the follow-up on measures taken in that respect and to collect data, in cooperation with NGOs.

5. In May 2009 the criminal justice system had undergone a thorough reform with the introduction of the lay judge system, the aim of which was to secure the general public's participation in the exercise of criminal justice, in order that the population might gain a deeper understanding of the judicial system and greater trust of the courts. The judgements delivered by lay judges rested on objective evidence and forensic investigation. Audiovisual recordings had been made, as an experiment, of more than 90 per cent of interviews conducted between April 2012 and March 2013. An advisory board of the Ministry of Justice had issued a favourable opinion on the usefulness of those recordings and was studying practical arrangements for their systematic use.

6. **Mr. Yamanaka** (Japan), summarizing Japan's written replies to the list of issues, said that, although their position in the internal hierarchy of laws was not established by the Constitution, international instruments ratified by Japan took precedence over domestic laws. Whether the provisions of the Covenant could be invoked directly by the courts was examined on a case-by-case basis. Examples of cases where those provisions had been directly cited before or by courts could be found in paragraphs 3 to 5 of the written replies. The Human Rights Commission Bill had been submitted to the Diet on 9 November 2012, but no action had been taken on it owing to the dissolution of the House of Representatives a few days later. While it recognized the usefulness of the individual communications procedure, before deciding whether or not to accept it, Japan had first to examine the implications of that procedure for its judicial system and legislative policy. That process was under way.

7. Article 14, paragraph 1, of the Constitution embodied equality for all before the law and prohibited discrimination based on race, creed, gender, social status or family origin. Laws regarding employment, education, health services and transportation also contained provisions banning discrimination. Several examples of judicial decisions rendered in discrimination cases could be found in paragraphs 16 to 19 and 23 to 26 of the written replies. As public opinion was divided on proposals to shorten the waiting period for women who wished to remarry and to harmonize the minimum age for marriage of men and women, the Government deemed it preferable not to revise legislation for the time being.

8. Detailed information on information campaigns to counter domestic violence and on the training given in that respect to police officers, public prosecutors and judges was to be found in paragraphs 49 to 53 of the written replies. The criminal law provisions punishing sexual offences were being reviewed. One of the changes under consideration was to make rape automatically subject to prosecution, whereas currently it could be prosecuted only if a complaint was filed. The Act on Special Provisions for Handling People with Gender Identity Disorders had been amended in 2008 to the effect that the statutory ban on a sex change, which had initially applied to any person with children, had been restricted to persons with underage children. Combating xenophobia and discrimination based on gender orientation and identity was a priority for the Government which rolled out activities to raise awareness of those issues all year round.

9. As the death penalty was still regarded by the majority of Japanese as the only fitting punishment for particularly serious crimes, the Government considered it inadvisable to abolish it, or to introduce a moratorium on executions. Nor did it deem it necessary to introduce a mandatory review of death sentences, since the latter were passed in accordance with extremely stringent procedures and were open to appeal. The Government did not consider the treatment of death row inmates to be contrary to human rights, since the greatest of attention was paid to their physical and mental health. The restrictions on their right to communicate with one another and to receive visits could be lifted, provided that that did not threaten order within the prison. The Government saw no reason to abolish the substitute detention system because it was accompanied by the requisite guarantees of detainees' fundamental rights.

10. The notion of "public welfare" met the need to regulate the exercise of certain rights when they encroached on others. Its purpose was not arbitrarily to restrict human rights in any way and there were therefore no grounds to specify in legislation that public welfare restrictions on freedom of religion, opinion and expression must not exceed those permissible under the Covenant. The principle of non-refoulement embodied in article 53, paragraph 3, of the Immigration Control and Refugee Recognition Act was properly applied. Aliens whose application for refugee status had been denied had seven days to lodge an appeal. The immigration services and the Japanese Federation of Bar Associations were discussing ways of improving procedures for determining refugee status, especially in

respect of the access of aliens held in administrative custody to free legal advice. Minors seeking asylum were not placed in detention unless it was otherwise impossible to care for them, in which case everything was done to ensure that detention was as short as possible.

11. The Ainu had been recognized as an indigenous people since 2008 and a policy of actively promoting their language and culture was pursued, above all through the Foundation for the Research and Promotion of Ainu Culture. A "symbolic area for ethnic harmony", which would be devoted to the revitalization of the Ainu culture, was being laid out. Measures were also being taken to protect the cultural heritage of Okinawa. All Japanese children were guaranteed the right to education, without discrimination. Korean schools were not currently covered by the tuition-waiver programme for secondary education, because it had been found that the content of their education and their management were influenced by the Chongryon Association and did not comply with Japanese laws and regulations. Since 2008, all school leavers, including those from Korean and other foreign schools, whose knowledge was equivalent to or better than that attested to by the Japanese secondary school-leaving certificate, could be admitted to university subject to a case-by-case examination of their file.

12. The Government, being aware of the unspeakable suffering of the "comfort women", had presented public apologies to those concerned on several occasions and in 1995 it had set up the 4.8 billion yen Asian Women's Fund, which made it possible to offer medical and social support to those women and to pay them compensation. The Fund had been wound up in March 2007, but the Government was still carrying out follow-up activities. As part of the implementation of the 2009 national Action Plan to Combat Trafficking in Persons, the Government had gathered information with a view to defining "trafficking" and in June 2010 it had published guidelines on the examination of trafficking cases. In 2005 the Immigration Control Act had been revised and supplemented with provisions making it possible for trafficking victims to be issued with a special residence permit. Since the introduction of those amendments, all trafficking victims unlawfully present in the country had applied for and obtained a residence permit. Training on subjects connected with trafficking was organized for police officers, judges and public prosecutors. In 2009 the Immigration Control Act had been amended to expand the legal protection of apprentices and trainees and to prevent their exploitation, including that of sexual nature. Inspections were conducted if there was any suspicion that labour legislation had been breached and, if offences were found to have occurred, the employer could lose its authorization to take on trainees for five years.

13. Since the revision of the Nationality Act in 2008, children born out of wedlock could obtain Japanese nationality, provided that one of the parents was Japanese and had officially recognized the child. In addition, the Civil Code had been revised in 2013 to give children born out of wedlock the same inheritance rights as the children of a married couple. The authorities had embarked upon a revision of criminal law provisions punishing sexual offences in order to raise the age of consent to sexual relations, which was currently 13. The relevant draft amendments should be adopted by March 2016 at the latest. Legislation on the prevention of violence against children did not expressly prohibit corporal punishment. As indicated in the written replies (para. 282 et seq.) measures had been taken to prevent and prohibit corporal punishment in schools.

14. **The Chairperson** invited Committee members who so wished to put questions to the delegation.

15. **Mr. Flinterman** (Country Rapporteur) welcomed the submission of the report and written replies and was pleased to note that the dialogue between the State party and the Committee had been pursued almost without interruption for 35 years. While progress had certainly been made over that period, an analysis of the follow-up to the Committee's previous concluding observations showed that some matters were again under consideration

because the State party had not taken real steps to solve the problems. Since the information in the written replies regarding the status of the Covenant in the hierarchy of domestic law was incomplete, he invited the delegation to specify the articles of the Covenant which were directly applicable, to provide examples of legislation adopted in order to incorporate into domestic law the provisions of the Covenant which were not directly applicable, to explain the Covenant's status vis-à-vis the provisions of the Constitution concerning human rights and to say if cases concerning violations of the Covenant's provisions could be brought before the Supreme Court. The delegation might also wish to say whether members of the judiciary, public prosecutors and police officers were given training in the applicability of the Covenant and whether the Committee's general comments had been translated into Japanese and included in training programmes. It would be interesting to know the conclusions of the internal study of the advisability of accepting the Committee's competence to receive communications, the potential obstacles to the State party's ratification of the Optional Protocol to the Covenant and when a decision would be taken on that matter. Ever since the beginning of the 1990s the Committee had been recommending that the State party should set up an independent national human rights institution. He therefore asked what prevented the establishment of such an institution. He also invited the delegation to explain the system for remedying human rights violations to which reference had been made in the written replies.

16. **Ms. Majodina** asked what was meant by the term "unreasonable discrimination" which was to be found in the written replies. She wondered whether the State party intended to adopt a general law prohibiting all forms of discrimination, in accordance with article 26 of the Covenant and whether measures had been taken to establish a body to monitor direct and indirect discrimination in the public and private sectors. She invited the delegation to describe the measures taken to protect victims of violence inflicted by a same-sex or common-law spouse, since those categories of victims were not entitled to request a protection order. It would be interesting to know how many foreign victims of domestic violence had obtained a residence permit in the State party, how many sentences had been passed for breach of a protection order and what specific steps had been taken to review the definition of the constituent elements of rape in criminal law.

17. Having noted the detailed information supplied in the report on substitute detention (*daiyo kangoku*), she was surprised that for 30 years the Government had not found the requisite resources to open more detention centres, a move which would make it possible to abolish that form of detention which blatantly conflicted with the provisions of the Covenant. Information from an NGO suggested that there had been several instances of confessions obtained by coercion during substitute detention over the previous five years. It would be helpful to hear what the delegation had to say on that matter and to know if there was a cause and effect connection between lengthy questioning during substitute detention and the fact that suspects subjected to that treatment made false statements. She wondered whether the *Hakamada* case, where a man who had been sentenced to death on the basis of confessions extorted after 20 days of questioning while in substitute detention had been released pending a review of his case after spending 48 years on death row, might not encourage the Government to abolish *daiyo kangoku*.

18. **Mr. Neuman**, noting that the State party was not yet prepared to adopt measures to shorten the period of time during which women were prohibited from remarrying and to harmonize the minimum age of marriage of men and women, wished to have an explanation of the argument put forward on that subject in the written replies, namely that such changes would undermine the foundations of the institution of marriage and the family. Since the Committee had received information that many persons with mental disability had been wrongly deprived of their liberty, he asked the delegation whether it was correct that persons with disabilities could be confined against their will solely because their disability tarnished their family's reputation, whether there were any channels of

appeal against involuntary hospitalization and whether there were any guarantees enabling persons who had been hospitalized at their own request freely to exercise their right to discharge themselves. According to some sources, thousands of persons remained in medical establishments because they had nowhere else to go and the living conditions of persons in group homes were not really any better than in hospitals. The delegation might wish to comment on those allegations and to say whether the State party intended to take steps to ensure that persons with mental disability could live in the community with the requisite assistance and that involuntary hospitalization would be used solely as a last resort and only as long as was strictly necessary.

19. It was regrettable that the State party did not intend to abolish the death sentence or adopt a moratorium on its implementation. The State party's written replies to questions on that form of sentence were very skimpy. He wondered whether it was true that Mr. Hakamada, the man who had been sentenced to death and who had been freed a few months earlier pending retrial, had spent almost 50 years waiting for execution at any moment. As no death sentence had been commuted since 1975, it would be useful to know whether the right to request the commutation of the sentence, embodied in article 6, paragraph 4, of the Covenant, could really be exercised in the State party. He invited the delegation to confirm the accuracy of information from an NGO that the unlawful use of explosives and damaging inhabited buildings were among the 19 offences carrying the death penalty. Since lay judges would henceforth have the authority to pass death sentences, he asked whether the State party intended to follow the Committee's recommendation that a compulsory review of death sentences should be introduced. He wished to know why meetings between persons who had been sentenced to death and their lawyers were still not confidential. Lastly, he requested information about the findings of the Ministry of Justice study of the death sentence.

20. **Mr. Shany**, noting the limited progress recorded in women's representation in the world of work and political life, asked whether the State party intended to adopt more energetic measures than those taken so far. He wished to know why policies to promote women's recruitment, reduce the wage gap between men and women and increase the proportion of women holding positions of responsibility had had little effect and whether the reasons for that failure would be studied under the Third Basic Plan for Gender Equality. The delegation might wish to describe the content of the counselling given to women who had sought consultations owing to the fact that they had been dismissed because they were pregnant, to which reference had been made in the written replies, and to explain why only 19 cases of wrongful dismissal had been referred to the courts and why harassment at the workplace, including sexual harassment, had not been expressly qualified as a crime in domestic law. He also invited the delegation to say whether the Government intended to conduct a survey of the working conditions of women belonging to a minority and whether any measures had been adopted to improve the representation of that category of women on the labour market. Turning to the fight against discrimination, he asked if it was true that the dissemination of racist ideas was not punished by law, unless it was accompanied by other criminal acts and whether the Government intended to make any moves to fill current gaps in legislation in that sphere.

21. As far as audiovisual recordings of police questioning were concerned, it would be interesting to know the criteria for deciding whether or not questioning was to be recorded and what measures were in place for supervising recordings and for controlling the use made thereof. He asked the delegation to respond to allegations that the rules applying to questioning were not respected and that questioning took place without a lawyer. It might also wish to comment on the number of protracted questioning sessions that were authorized every year. The fact that 99 per cent of trials in Japan ended with a conviction, which rarely formed the subject of an appeal, suggested that proceedings were more favourable to the prosecution than to the defence and that inordinate importance was

attached to confessions, which might be false when they were obtained under pressure. He asked the delegation to say what action had been taken on the recommendation of the Committee against Torture that investigations into alleged acts of torture inflicted on detainees should be more independent.

22. **Ms. Seibert-Fohr** said that, while the 2004 Act on Special Provisions for Handling People with Gender Identity Disorders constituted some progress, she wondered whether the reference to "disorders" might not add to the stigmatization of the persons concerned. She asked the delegation whether any other legislative measures were planned to facilitate recognition of transsexuality and whether discrimination against transsexual persons was punished by law. Information would be welcome on the specific measures taken to combat the harassment of homosexual, bisexual and transsexual persons, on the investigation of such actions and on the outcome of the national action plan in that sphere. It would also be useful to know whether, despite the reform of the social housing system, local authorities could still refuse to allocate housing to a homosexual couple. With regard to the national pension scheme, it seemed that the nationality requirements imposed between 1961 and 1981 still affected some population categories. She therefore invited the delegation to provide a detailed description of the transitional measures adopted for the persons concerned and of the more flexible procedures for granting the pensions to which they were entitled.

23. **Mr. Zlătescu** asked the delegation for information on preventive measures, inquiries and compensation in respect of the numerous alleged human rights violations in psychiatric hospitals. Had measures been adopted to guarantee the principle of informed consent and train medical staff in that respect? The delegation might wish to say whether the Government had a strategy to promote deinstitutionalization and expand community services.

24. **Mr. Bouzid** asked whether the special surveillance measures applied to the Muslim community, which had been adopted as part of the fight against terrorism, were still in place and whether persons whose personal data had been divulged by the police had received compensation.

25. **The Chairperson** invited the delegation to reply to the questions put to it.

26. **Mr. Yamanaka** (Japan) explained that, under article 98, paragraph 2, of the Constitution, the Covenant was incorporated into Japanese domestic law. In some cases its provisions could be applied automatically, in others they had an equivalent clause in national laws. Examples of cases where the Covenant had been cited were mentioned in paragraphs 3 to 5 of the written replies to the list of issues. Japan considered that the individual communications procedures helped to ensure the implementation of international human rights instruments and it was seriously studying the possibility of acceding to the Optional Protocol to the Covenant. However, the impact of that procedure on the Japanese judicial and legal system and the possible methods of applying the Committee's decisions had not yet been determined. Discrimination was prohibited by article 14, paragraph 1, of the Constitution. There was no single law prohibiting all forms of discrimination, but anti-discrimination clauses were included in various acts on employment, education and transportation, inter alia. Persons who used discriminatory language were liable to prosecution if the terms employed were defamatory, if they cast a slur on the victim's honour or if they constituted a form of intimidation. Violence accompanying such language was punished per se by the law. Japan took a humanitarian approach to the protection of foreign nationals against domestic violence. Prosecution was initiated irrespective of the victim's nationality and protection orders could be issued by the courts as a preventive measure. Same-sex couples' access to social housing was possible under the law, but allocation criteria were a matter for local government.

27. **Mr. Matsumoto** (Japan) said that judges and public prosecutors were trained in and made aware of issues related to international human rights law, including the application of the Covenant. The bill establishing a human rights commission had been submitted to the Diet a few days before the latter had been dissolved in November 2012 and no action had therefore been taken on it. The terms of reference, field of action and various other aspects of the prospective institution were again under discussion.

28. **Mr. Tanaka** (Japan) said that changing the legal age of marriage of men and women was a sensitive issue which formed the subject of debate in Japanese society. It was therefore too early to alter it. The purpose of the waiting period which women had to observe before remarriage was to avoid any filiation problems which might arise in the event of rapid remarriage.

29. **Mr. Kitajima** (Japan) said that substitute detention in police cells facilitated police investigations and visits by family members and lawyers. As most suspects were currently held in such premises and the cost of building additional prisons would be substantial, Japan considered it unwise to dismantle that system. Detention conditions in police premises were regulated by law and monitored by detention facilities visiting committees. The Japanese Government did not consider the use of substitute detention to be problematic in that respect. Persons placed in detention, including those in police custody, had the right freely to choose their lawyer and to talk to that person without a witness. When the suspect was liable to a heavy prison sentence or the death sentence, he or she could obtain the assistance of a lawyer by means of legal aid. Destitute persons could also apply for legal aid.

30. **The Chairperson** thanked the delegation and invited it to continue its replies at the next meeting.

The meeting rose at 6 p.m.

United Nations CCPR/C/SR.3081

International Covenant on Civil and Political Rights

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Human Rights Committee
111th session

Summary record of the 3081st meeting
Held at the Palais Wilson, Geneva, on Wednesday, 16 July 2014, at 10 a.m.

Chairperson: Sir Nigel Rodley

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Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Sixth periodic report of Japan (continued)

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The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Sixth periodic report of Japan (continued) (CCPR/C/JPN/6; CCPR/C/JPN/Q/6 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Japan took places at the Committee table.*

2. **Mr. Yamanaka** (Japan) said that, in June 2008, the Grand Bench of the Supreme Court had declared unconstitutional the legitimation requirement under the Nationality Act for children born out of wedlock to a Japanese father and non-Japanese mother. In September 2013, it had ruled that the article of the Civil Code capping the inheritance that an out-of-wedlock child could receive at half that of a legitimate child was also unconstitutional. Adequate human rights guarantees were therefore being provided.

3. **Mr. Matsumoto** (Japan), responding to questions about the concept of reasonable discrimination, said that article 14, paragraph 1, of the Constitution provided for equality before the law. Distinctions that were not made on rational grounds or did not respond to an objective of law violated that article and were deemed discriminatory.

4. **Mr. Tanaka** (Japan) said that perpetrators of hate speech classified as a tort were liable to pay damages. The Penal Code contained provisions on defamation under article 230 and intimidation under article 222. In cases where hate speech was not considered a civil wrong or an offence punishable under the Penal Code, careful consideration had to be given to the issues of freedom of speech and the protection of human rights. The Government would continue to develop awareness-raising activities to combat prejudice against foreign nationals.

5. **Mr. Matsumoto** (Japan) said that, since December 2007, in response to requests for information by the general public, the name and date of birth of executed persons were officially disclosed, as were the location of the execution and the crime for which the death penalty had been imposed. The matter was complex, as due consideration had to be given to the psychological impact that such disclosure might have on persons connected with the condemned prisoner and other inmates awaiting execution. He read out a list of the 19 capital offences in Japan, which included the very serious crimes of arson of an inhabited structure and use of explosives. In recent years, the death penalty had only been imposed when such offences had resulted in death.

6. With regard to the provision of health care to detainees, he said that, under article 62, paragraph 1, of the Act on Penal Detention Facilities and Treatment of Inmates and Detainees, prison wardens were required to arrange for diagnostic procedures to be performed on prisoners who were ill or injured, including those exhibiting symptoms of mental illness. Prisoners who had been sentenced to death were examined regularly by prison doctors and external medical personnel. In addition, under article 479 of the Code of Criminal Procedure, the Minister of Justice was required to issue an order suspending the execution of prisoners diagnosed with a mental illness.

7. **Mr. Kitajima** (Japan) said that the study group on capital punishment, which had met on 10 occasions between August 2010 and March 2012, had considered the advantages and disadvantages of the death penalty. Its mandate had expired on 9 March 2012 with the publication of a summary of its discussions and findings, in which it had stated that there were valid arguments in favour of and against capital punishment, and that it would not be appropriate to draw any definitive conclusions in that regard.

8. **Mr. Hashiguchi** (Japan) said that the attendance of officials during meetings between an inmate sentenced to death and their lawyer was not considered appropriate unless there were special circumstances or the inmate's mental condition needed to be assessed.

9. **Mr. Tanaka** (Japan), referring to the rights of lesbian, gay, bisexual and transgender (LGBT) individuals, said that the Ministry of Justice investigated alleged human rights breaches promptly and took appropriate measures. The human rights organs of the Ministry of Justice had been distributing leaflets throughout the country on eliminating discrimination on the grounds of gender identity disorder, which had been selected as an annual priority. Persons with gender identity disorder were offered counselling in mental health and welfare centres, while children received specialized care at school. Where necessary, teachers liaised with prefectural education boards to ensure effective coordination between medical services.

10. **Mr. Matsumoto** (Japan) said that the Act on Special Cases involving the Handling of Gender for People with Gender Identity Disorder, which had entered into force in 2004, had been revised in 2008 to allow parents to change their legal gender as long as they had no underage children.

11. **Mr. Kitajima** (Japan), in reply to a question about the detention of Iwao Hakamada, said that the Shizuoka District Court had ordered a retrial on 27 March 2014 and proceedings were under way. Under the Code of Criminal Procedure, the maximum permissible length of pretrial detention was 20 days, a provision that had been respected in the case at hand. In general, suspects were not held in custody while investigations were conducted unless they had been arrested in flagrante delicto, they posed a flight risk or there was a danger of evidence being destroyed. The extension of pretrial detention was conditional on the approval of a judge following a rigorous screening and review process. Suspects could appeal such extensions and request reviews of their detention if they felt that it was unjustified or unduly long.

12. Turning to the issue of interrogations, he said that, in the absence of alternative methods of evidence collection such as telephone tapping and plea bargaining, questioning suspects was the most important form of obtaining information. It was therefore essential to decide whether it was appropriate for defence lawyers to attend interrogations on a case-by-case basis, as their presence could undermine the work of police officers and public prosecutors.

13. The audiovisual recording of interrogations in certain types of cases was being conducted on an experimental basis and would be rolled out fully on 1 October 2014. A special subcommittee comprising intellectuals and lawyers had been set up to examine the practicalities of a full-scale roll-out, which would place a significant burden on human and material resources, and had reported that audiovisual recording was particularly desirable in cases involving lay judges and those in which public prosecutors initiated investigations. After the roll-out, studies would be carried out on the status and implementation of the measure and changes would be made if necessary.

14. **Mr. Ishiwatari** (Japan) said that a system had been put in place to supervise police interrogations. Inappropriate behaviour such as coercion and abuse was investigated by an external authority and could lead to criminal proceedings being suspended. Prolonged interrogations between the hours of 10 p.m. and 5 a.m. could only be conducted with the approval of the chief of police, and the handcuffing of suspects during questioning was to be avoided. Regarding concern over an alleged forced confession in a case involving the remote manipulation of a personal computer, a police inquiry into the matter had not uncovered any wrongdoing.

15. **Mr. Takeda** (Japan) said that a compensation claim had been filed in relation to the online disclosure of personal information pertaining to a number of Muslim citizens. The National Police wished to offer its support to the individuals affected.

16. **Mr. Teramura** (Japan) said that eligibility for pension benefits was dependent on the length of time for which an individual had contributed to the pension system. Transitional measures had been introduced for foreign nationals under the age of 60 in April 1986, such that the period during which they had not been covered by the national pension system due to nationality requirements (1 April 1 1961 to 31 December 1981) must be taken into account in granting them national pension benefits. Foreigners who had been over 35 when the nationality clause had been abolished were therefore eligible to receive benefits, provided they satisfied all other requirements. As individuals who submitted pension claims were not asked to state their nationality, the Ministry of Health, Labour and Welfare was unable to provide data on the number of foreign nationals who had received benefits.

17. Regarding discrimination against the Burakumin community, he said that employment discrimination was prohibited in Japan, and that recruitment decisions must be based on candidates' skills and capabilities.

18. **Ms. Hirobe** (Japan) said that, because many women gave up work during pregnancy and childbirth, relatively few possessed the expertise needed to assume managerial positions, an issue that was being tackled by the Government through a number of initiatives. The dismissal or other disadvantageous treatment of women on account of pregnancy or childbirth was illegal, and employers who failed to comply with the provision despite being warned were named and shamed.

19. **Mr. Morotomi** (Japan) said that, under Japanese law, managers of psychiatric hospitals must endeavour to hospitalize persons with mental illnesses on a voluntary basis, and were obliged to grant requests for discharge from persons hospitalized on that basis. A rigorous procedure was in place for involuntary commitment, which was subject to third-party review at the prefectural level. Group homes had been established to make early discharge possible and assist the reintegration into society of persons hospitalized for prolonged periods, and studies had been launched to develop specific community treatment measures for persons with disabilities.

20. Since 2012, legislation had been in force to prevent the abuse of persons with disabilities, and municipal and prefectural authorities had a duty to ensure that group homes and other institutions were properly managed. The Ministry of Health, Labour and Welfare had produced a manual on the prevention of abuse and had circulated it widely, and the Government had borne part of the cost incurred in developing a framework for prevention.

21. **Ms. Sawai** (Japan) said that, since 2011, efforts had been made to boost the number of female candidates in local elections; the success of affirmative action measures in other countries had been assessed with a view to their possible adoption in Japan. Regarding the business sector, Prime Minister Shinzō Abe himself had urged companies to appoint more women in managerial positions and set themselves voluntary targets. A system of subsidies and fiscal incentives was being introduced to further encourage employers in that regard. The Government's revitalization strategy, which had been revised in June 2014, established guidelines to promote the participation of women in the labour market, and the effectiveness and implementation status of the Third Basic Plan for Gender Equality were being continuously evaluated by an expert monitoring group.

22. Regarding domestic violence, the Act on the Prevention of Spousal Violence and the Protection of Victims had recently been amended and a number of organizations were working on that issue. Counselling services were available for victims at the Spousal Violence Consultation and Support Centres and Women's Consulting Offices. Efforts were

being made to extend the operating hours of those services to cover nights and holidays and thereby provide greater support. The average duration of hearings in cases for the issuance of protection orders was more than 12 days. Protection orders had been issued in 110 cases in 2010. Regarding changes of status for stays of victims of domestic violence, the Immigration Bureau had registered approximately 50 approved changes per year in recent years.

23. **Ms. Seibert-Fohr**, referring to question 16 of the list of issues, said that, although the State party claimed not to be aware of complaints involving the abduction, confinement and forced de-conversion of adult followers of the Unification Church and Jehovah's Witnesses by their families, some cases had apparently been brought before the civil courts, although no injunctions had been granted. She asked what steps the State party planned to take to act upon that information.

24. On the issue of freedom of opinion and expression, noting with concern that the Constitution allowed the restriction of those rights if necessary for the public good, she asked how the State party ensured that such restriction did not go beyond what was specified in article 19 of the Covenant. Recalling the relevant aspects of the Committee's general comment No. 34 on freedoms of opinion and expression, she expressed concern in relation to the adoption of the Act on the Protection of Specially Designated Secrets and its effects on those freedoms. The exact scope of application seemed unclear and there did not appear to be any specific definition of what could be designated as secrets, which was particularly worrying given the heavy penalties for disclosure of classified information. The fact that those penalties also applied to persons who obtained secrets and published the relevant information would surely have a chilling effect on the media. Although the Act provided for consideration of freedom of news coverage, the practical meaning of that provision remained unclear. How would the State party ensure that the Act was only applied in conformity with article 19 and what safeguards were in place to protect journalists, researchers, environmental activists and human rights defenders from criminal punishment?

25. On the rights of persons belonging to minorities, she recalled the Committee's previous concluding observations and its general comment No. 23. She wished to know what special positive measures the State party intended to adopt to preserve and promote the cultural heritage and traditional way of life of the Ainu, Ryuku and Okinawa. Did the State party plan to provide their children with adequate opportunities to receive instruction in their language and culture?

26. **Mr. Neuman** said that, from some of the delegation's answers, there appeared to be a conception that a human right could be outweighed if there was any possibility that respecting it would cause a disadvantage, which was not the understanding expressed in the Covenant. For example, women could be forbidden from marrying for six months after divorce because of the possibility that a child could be born and there might be a doubt as to paternity. Given the advances in DNA technology, such an argument was no longer justified.

27. Referring to question 18 of the list of issues, he recalled that the principle of non-refoulement provided for under article 7 of the Covenant applied regardless of whether the individual at risk of torture met the particular criteria under the Convention relating to the Status of Refugees. Noting that legal proceedings for asylum applications appeared not to address that issue, he asked why the State party did not provide a legal procedure whereby the individual could be heard on the danger of refoulement that violated the Covenant. Observing that the refugee examination counsellors did not have any real decision-making authority and there were concerns as to their independence, he asked why the State party did not provide an independent appeal mechanism. He requested clarification as to whether

there was a new law in force in that area and, if so, requested details in writing of any changes relevant to questions18 and 19.

28. Noting that applicants who appealed by filing a lawsuit were still vulnerable to being deported unless the court granted a provisional order suspending deportation while it decided on the case, he wondered why the State party did not provide for a suspension of deportation until all legal proceedings on a non-refoulement claim had been decided. How was deporting the individual before the risk had been determined consistent with article 7 of the Covenant? With regard to ill-treatment during deportation operations, he recalled that the question had been prompted by an incident in 2010 when a man being deported to Ghana had died while subjected to restraints. He wondered what lessons had been learned from that incident and what was being done to prevent similar cases in the future.

29. Turning to question 19 on detention of asylum seekers, he said that the concern was about the right to personal liberty rather than discrimination. It appeared that the criterion that detention for a substantial period should be used only when necessary and when it was determined that alternatives to detention would be insufficient because of a danger to public safety or a risk of flight was not applied, and that such decisions were at the discretion of the administrative officials. He asked the delegation to explain how the current practice was consistent with the Covenant and what the basis for the detention of children was in that context.

30. **Ms. Majodina**, referring to question 22, said that little progress had been made in resolving the problem, despite consistent recommendations by the Committee and other international bodies. It was high time for Japan to replace the euphemistic term "comfort women" and refer to the victims properly as "enforced sex slaves". She asked whether it was still the State party's position that the Japanese military had been directly and indirectly involved in the establishment and management of "comfort stations", as indicated in the 1993 Kono statement. If so, there was direct State responsibility for the violation of the human rights of those women. She asked what remedies were available to the victims, how many judicial claims had been brought before the Japanese courts over the years, what had been their outcomes, and what steps the State had taken to establish an investigative body and disclose all the information in its possession. She further asked whether the atonement money paid to those few victims who had accepted it was considered compensation proportionate to the damage caused. She enquired what measures had been taken to refute allegations by senior public figures denigrating the victims and denying the violations that the State had already admitted in the 1993 apology in the Kono statement. What efforts had the State made to meet the victims and offer an apology in a public ceremony?

31. Turning to question 25, she said that, although some progress had been made, the procedures now in place now for registering a child born out of wedlock were apparently cumbersome. She wondered what were the obstacles to resolving that matter and ending the persistent discrimination in that area.

32. **Mr. Flinterman**, referring to the status of the Covenant in the Japanese domestic legal order, asked whether it was true that, since the Covenant had taken effect in the State party, the Supreme Court had only explicitly recognized the self-executing character of article 26 of the Covenant. Were other articles also considered to be self executing and was the Government planning any action to promote the self-executing character of all rights under the Covenant? He asked about the time frame for a decision on accession to the Optional Protocol to the Covenant and what obstacles existed to the establishment of a national human rights institution based on the Paris Principles.

33. Turning to question 23, he asked whether the State party had taken any steps towards acceding to the Protocol to Prevent, Suppress and Punish Trafficking in Persons,

Especially Women and Children. He would welcome clarification of the definition of trafficking used in the Action Plan to Combat Trafficking in Persons and information on any action taken to combat trafficking for the purpose of labour exploitation and whether training was provided to labour inspectors in that regard. He wondered what measures had been taken to ensure that clear identification procedures were set out so that victims of trafficking were not incorrectly identified and treated as undocumented migrants. He asked the delegation to comment on reports that female victims of trafficking were rarely admitted to shelters and received little support. What preventive measures were being taken to eradicate demand for trafficking for the purposes of sexual and labour exploitation and what sanctions were imposed on traffickers?

34. With regard to question 24, he noted that there continued to be serious concerns in relation to persistent violations of the human rights of migrant workers under the Training and Technical Internship Programme. Recalling the recommendation of the Special Rapporteur on the human rights of migrants, he asked whether the Government was considering replacing the programme with an employment programme aimed at achieving the original purpose of transferring skills to developing countries.

35. Referring to question 28, he would appreciate information on how the Committee's 2008 concluding observations had been disseminated, including whether they had been translated into Japanese and discussed with other stakeholders, and on the plans for the concluding observations from the current session.

36. **Mr. Shany** asked the delegation to explain why the State party was reluctant to fully legislate against sexual harassment. On the issue of hate speech, he noted that there did not appear to be a strong commitment to combating hate speech that constituted incitement to discrimination or hostility, as opposed to violence. It was preferable to curb hate speech through criminal laws rather than the Civil Code.

37. Referring to question 15 of the list of issues, he asked whether the constitutional provision that no individual should be arrested or detained without being informed of the charges against them and of their right to legal counsel also applied when an individual went voluntarily to the police for questioning. Was it true that detainees in the substitute detention system (*Daiyo Kangoku*) were deprived of access to a lawyer for 72 hours? Did the State party accept the principle that a person had the right to meet with their lawyer as soon as possible, including before the commencement of the interrogation? The Committee hoped the State party would reconsider its position on the right to have legal counsel present during interrogation.

38. On question 26, he welcomed the State party's willingness to review the minimum age of consent but wondered why the process was taking so long. As to corporal punishment, he expressed concern at the State party's strategy of requesting changes rather than making them a requirement. He asked whether there were any plans to amend the legal provisions relating to corporal punishment, which allowed those with parental authority to discipline their children in an "appropriate" manner.

39. **Mr. Rodríguez-Rescia** asked what criteria were used to determine the 19 offences that were subject to the death penalty. The inclusion of certain crimes, such as treason, called into question the objectivity of those criteria. Furthermore, public sentiment did not constitute an objective or reasonable criterion on which to base public policy on the death penalty. The argument that prior notice to inmates of the date of execution of their death sentence would disturb their peace of mind was inadequate since the State was not in a position to measure their peace of mind. Advance notification, rather than the current 24-hour notice, should be given.

40. Mr. Kälin said that the Reconstruction Agency had reported the Fukushima disaster as the cause of death given in a considerable number of death certificates. He would like

further details on that cause of death and on the number of cases of cancer. He asked whether the Government planned to reopen the designated evacuation areas and, if so, whether the evacuees would no longer receive compensation, which would force them to return to contaminated areas. He asked what kind of information on contaminated areas was provided and whether Government information was disseminated in accordance with the freedom to receive information under the Covenant.

41. **The Chairperson**, speaking in his capacity as a Committee member and quoting from a report on the substitute detention system (*Daiyo Kangoku*), asked whether it was true that: (a) in theory a suspect had a right to legal counsel under *Daiyo Kangoku* but in practice suspects had no contact with attorneys and could not exercise that right without the assistance of investigators, as telephone calls were prohibited; (b) if such assistance was provided, limitations were imposed on the time and place of conferral and on the length of consultations; (c) the transfer of items between the suspect and the attorney was prohibited; and (d) the attorney was not permitted to be present at the interrogation.

42. **Mr. Katsuki** (Japan) said that the Act on access to information had been strengthened and the public was entitled to request the disclosure of administrative documents. The Protection of Specially Designated Secrets Bill, which would be enacted towards the end of 2014, was in line with article 19 of the Covenant and did not alter provisions in the Constitution or the Act on access to information. The information covered by the Bill must fulfil specific criteria set out in that text; it must not have been publicly disclosed; and it must constitute a risk to national security. The "especially harmful activities" criterion included such acts as espionage. A procedure was established to prevent abusive application of the Act, and to protect freedom of expression and of the press.

43. **Mr. Matsumoto** (Japan) said that the principle of non-refoulement was respected in the State party. The Immigration Control and Refugee Recognition Act had been amended to bring it into line with article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Additionally, the return of foreign nationals to a destination where they were classified as missing persons was prohibited. Following a review of the immigration regulations on deportation, procedures had been strengthened and training sessions designed for officers responsible for carrying out deportations.

44. **Mr. Negishi** (Japan) said that foreign nationals were detained under the deportation procedure only in exceptional circumstances, such as where a crime was committed subsequent to an application for refugee status. A mechanism existed for appeals against decisions to refuse refugee status. It included a system of refugee examination counsellors who were empowered to interview appellants, communicate with the Ministry of Justice, attend hearings and provide advice. Regardless of the final decision, the counsellors' opinion on each case was made public. A subcommittee had been set up to deal with the increase in applications for refugee status.

45. **Mr. Odagiri** (Japan) said that the objective of the Technical Intern Training Programmes was to develop technology and skills to be transferred to developing countries. Discussions had been held on support, supervision and immigration regulations relating to the programme. Measures had been adopted to prevent illegality within the framework of the programme, strengthen the protection of trainees, and dismiss offenders. If violations of the human or labour rights of trainees came to light, the organization running the programme could be banned from that activity for a maximum of five years; several programmes had in fact been suspended in 2013. Persons entering Japan under the programme were given a contract, granted a specific residence status and protected under national labour law, which provided for insurance and compensation.

46. **Mr. Negishi** (Japan) said that the Government was making efforts to promote Ainu culture. Although the term "indigenous peoples" was not defined in Japanese domestic law, a resolution had been adopted by the Diet in 2008 on the recognition of the Ainu people as an indigenous people. No other minority groups had been thus recognized. The Okinawa people fully exercised their right to enjoy their own culture and practise their own religion, and the State party continued to promote their cultural heritage.

47. **Mr. Yoshida** (Japan) said that under the Protection of Cultural Properties Act, aspects of the Okinawa and Ainu cultural heritage were protected and funds were provided for projects for that purpose. Measures were taken to preserve the Ainu language, and research by UNESCO into Ainu as an endangered language had been published on the Ministry of Justice's website. Foreign children were entitled to education in their respective languages, subject to the availability of such education in their region. Courses were taught on Ainu and Okinawa history and culture within the mainstream education system.

48. **Mr. Mori** (Japan) said that information leaflets on the risks of radiation and ways to reduce exposure were distributed to the general public. Information following the Fukushima disaster had been communicated accurately and speedily. The Committee's previous concluding observations had been translated into Japanese and distributed to the Diet and other governmental bodies. They had also been published online to enable access by NGOs and civil society.

49. **Mr. Matsumoto** (Japan) said that accession to the Optional Protocol was under consideration. While certain language was categorized as hate speech in the Criminal Code, it remained important to respect freedom of expression. Bodies had been set up with responsibility for enhancing and raising awareness of the rights of foreign nationals in an effort to reduce discrimination against them. Human rights education with a focus on the rights of foreign nationals was provided in schools and private undertakings. A dedicated website for foreign nationals had been created. The dissolution of the Japanese Diet in 2012 had resulted in the withdrawal of the bill to establish independent human rights organizations, which had met with resistance regarding the degree of independence and definition of such organizations. Lastly, discussions were under way on a remedy mechanism relating to human rights.

50. **Mr. Tanaka** (Japan) said that the distinction between children born in and out of wedlock had been removed from most provisions of the Family Register. The requirement to indicate whether a child had been born in or out of wedlock in applications for a birth certificate had also been withdrawn. The laws concerning marriage and family life had been reviewed in that regard. The use of DNA to determine the paternity of a child was not always feasible or in the best interests of the child but that issue was nevertheless under discussion.

51. **Mr. Kitajima** (Japan) said that the possibility of raising the minimum age of sexual consent was being considered. Determining an act of rape and the age at which a person was in a position to give informed consent was sensitive and complex. For the large number of crimes carrying the death penalty, which included murder and murder with robbery, imprisonment with or without labour for life or a definite term was also an option. That did not apply to the crime of instigation of foreign aggression. A Supreme Court decision had established rigorous criteria for rulings on the death penalty.

52. **Ms. Hatakeyama** (Japan) said that suspects had the right of access to counsel, including at night and during holidays, without restriction on the length of the meeting, and rooms were allocated in detention facilities for that purpose. Although telephone calls were prohibited under *Daiyo Kangoku*, when a detainee wished to contact his or her lawyer the detention centre staff would communicate with the lawyer on the detainee's behalf. The

transfer of items between detainees and attorneys was permitted following an inspection of those items.

53. **Mr. Ishiwatari** (Japan) emphasized that legal counsel could be requested at all times. It was not automatically provided in cases involving voluntary interrogation but the individuals concerned were informed of their right of access to counsel and to withdraw from the interrogation at any time. Upon arrest, suspects were informed of their right to counsel. Reports of persons being forced to convert to a particular religion were addressed promptly through an investigation.

54. **The Chairperson** said that consideration of the State party's report would continue at the following meeting.

The meeting rose at 1 p.m.

United Nations CCPR/C/SR.3082

International Covenant on Civil and Political Rights

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Human Rights Committee
111th session

Summary record (partial)* of the 3082nd meeting
Held at the Palais des Nations, Geneva, on Wednesday, 16 July 2014, at 3 p.m.

Chairperson: Sir Nigel Rodley

Contents

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Sixth periodic report of Japan (continued)

* No summary record was prepared for the rest of the meeting.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of this document* to the Editing Section, room E.5108, Palais des Nations, Geneva.

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The meeting was called to order at 3 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Sixth periodic report of Japan (continued) (CCPR/C/JPN/6, CCPR/C/JPN/Q/6, CCPR/C/JPN/Q/6/Add.1 and HRI/CORE/JPN/2012)

1. *At the invitation of the Chairperson, the delegation of Japan took places at the Committee table.*

2. **The Chairperson** invited the delegation of Japan to resume replying to the questions raised at the previous meeting.

3. **Mr. Yamanaka** (Japan) said that the Supreme Court was not the only court that took into consideration the provisions of the Covenant and other international instruments in its decisions; the lower courts also did so. Japan had not yet ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, as it first had to ratify the Convention itself and the bill on ratification had not yet been approved by the Diet. On the issue of comfort women, it should be recalled that the agreement concluded between Japan and the Republic of Korea expressly stipulated that the disputes between the contracting parties and their nationals had been settled completely and finally. Furthermore, Japan had officially apologized to the victims on a number of occasions and had contributed considerably to compensation and rehabilitation by establishing the Asian Women's Fund, whose projects it continued to monitor despite the dissolution of the Fund. The Government did not intend to retract the Kono statement, in which it had acknowledged that the comfort women had, in most cases, been recruited against their will, but it did refute the description of the practice as sexual slavery.

4. **Mr. Mori** (Japan) said that steps were taken to promote the integration of children of foreign nationals in the public education system while enabling them to strengthen their knowledge of their language and culture of origin through extracurricular activities. Foreign students were eligible under the tuition-waiver programme for secondary school education. Corporal punishment at school was prohibited under the Education Act and any violation of that prohibition was subject to disciplinary sanctions. Students could report any problems in that regard to school counsellors or could call a special hotline. Corporal punishment in the family was also prohibited if it went beyond the reasonable exercise of discipline permitted under article 822 of the Civil Code. Any person who was aware of children being ill-treated was obliged to inform the competent authorities and children in need of protection could themselves request help from the Child Guidance Centres. The delegation denied that the majority of Japanese people were in favour of corporal punishment in the upbringing of their children.

5. **Mr. Teramura** (Japan) said that the guarantees provided for under employment legislation applied to apprentices and interns and that compliance by employers was actively monitored by the labour inspection services, which took the necessary steps to remedy violations, including, if applicable, through judicial means. Furthermore, a telephone helpline had been set up for apprentices and interns to report any problems regarding their working conditions.

6. **Ms. Genka** (Japan) said that measures taken to improve the protection of women victims of trafficking included the allocation of additional funds to the Women's Consulting Offices to allow them to establish psychological support units in the temporary shelters and make use of interpreters to provide better care for foreign victims.

7. **Ms. Hirobe** (Japan) said that the Government did not plan to make sexual harassment a criminal offence but acts of that nature could be prosecuted if they constituted other offences punishable by law, such as forcible indecency.

8. **The Chairperson** invited the members of the Committee to ask any further questions they might have, to which the delegation could reply in writing.

9. **Ms. Waterval** asked for clarification concerning the reason cited by the State party in its written replies to justify the exclusion of Korean schools from the tuition-waiver programme for secondary school education, which was considered by the students in those schools as a form of discrimination.

10. **Mr. Shany** drew the delegation's attention to the results of a survey conducted among the Japanese population, according to which 58 per cent of respondents considered corporal punishment a necessary component of a child's upbringing, and 65 per cent personally used corporal punishment. He would be interested to know what the State party thought of those figures indicating that public opinion was still largely in favour of corporal punishment, an assertion that the head of the delegation had refuted.

11. **Ms. Majodina**, responding to the objection by the head of the delegation to the use of the term "sexual slavery" to describe the activities the "comfort women" had been forced into, referred him to the 1926 Slavery Convention, which provided a comprehensive and widely recognized definition of slavery.

12. **The Chairperson** said that he was not sure he had understood the changes introduced by the new Act on State secrets as compared with the existing legislation in that area or why the State party had deemed it necessary to adopt the Act, given the numerous objections that had been raised to it.

13. **Mr. Yamanaka** (Japan) said that the Government had taken into consideration the definition of slavery provided in the 1926 Convention and it had thus been in full possession of the facts when it had concluded that the situation of the comfort women did not fall into that category. The delegation had endeavoured to reply to the Committee members' questions in good faith and had welcomed the opportunity provided during the dialogue to give an update on the situation of civil and political rights in Japan and the measures to be taken to continue to make progress in that area. The Government would pursue its efforts and, to that end, would endeavour to strengthen its cooperation with the international community.

14. **The Chairperson** thanked the Japanese delegation for its responses. However, the overwhelming impression was that, from one review to the next, the State party did not take account of the Committee's concerns and recommendations. The continued applicability of the system of substitute detention (*Daiyo Kangoku*), despite its flagrant incompatibility with the Covenant and repeated calls by the Committee and the international community for its abolition, was particularly telling in that regard. The argument that a lack of resources was the reason for maintaining the status quo was difficult to accept, coming from a country such as Japan. With regard to the so-called comfort women, the State party's position in asserting that the women had not been forcefully taken away while recognizing that, in most cases, the process had taken place against their will, was impenetrable, as were the reasons for which the Government had not set up an independent international inquiry to clarify the matter. The Committee recognized that Japan was, in many ways, a country that respected human rights, as demonstrated by the importance attached to the freedoms of expression, association and assembly, for example, but it remained concerned by the persistence of serious problems that adversely affected human rights. He reminded the delegation that it had 48 hours to provide the Committee with any additional information in response to the questions it had not had time to answer orally to be taken into account in the concluding observations.

15. *The delegation of Japan withdrew.*

The discussion covered in the summary record ended at 15.35 p.m.

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111th session

Summary record of the 3083rd meeting
Held at the Palais Wilson, Geneva, on Thursday, 17 July 2014, at 10 a.m.

Chairperson: Sir Nigel Rodley

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The meeting was called to order at 10.05 a.m.

Organizational and other matters

Draft general comment No. 35 on article 9 of the Covenant (continued)
(CCPR/C/GC/R.35/Rev.3)

1. **Mr. Neuman** (Rapporteur for general comment No. 35), introducing the second reading of the draft general comment, said that, following the first reading, the Committee had invited comments from States parties and other bodies, as a result of which there had been 9 comments from States parties and over 15 from NGOs, as well as some from sources from within the United Nations. The comments had generally been useful, although some showed a lack of understanding of the draft general comment, which could in itself be useful. Some of those commenting had wanted more depth on other articles of the Covenant. However, the Committee was restricted to 10,700 words, including the footnotes, and the text currently contained 12,000 words, so he would need to make cuts. Some footnotes that had made a particular point — mostly citations from previous general comments — had served their purpose and could be deleted. He suggested that he should retain citations containing quotations or other indications of their content.

2. With regard to the section entitled "General remarks", he said that Belarus objected to the whole process because the text was not available in Russian and had urged Committee to start all over again in a more inclusive manner. He had some sympathy with that view, but the Committee had to work within external constraints. Some States had objected that the draft general comment was not binding, while others said that the Committee should not cite its own views as authoritative; only a limited set of sources should be drawn on beyond the text of the Covenant itself. Nor should the Committee make categorical statements about the duties of States parties. The draft general comment, was, however, written in the customary way and did not purport to be legally binding. It was simply the way in which the Committee expressed its accumulated expertise on the application of the Covenant. Austria had said that the Committee should consider regional case law, to which his answer was that he had considered it, even if he gave no citations. Belarus had said that the Committee should take civil law into account, not just common law, but he noted that the majority of members of the Committee came from civil law systems and civil law had indeed been taken into account. A comment by the United Kingdom seemed to relate to an earlier draft of the general comment. One NGO had said that there should be a separate title for each section. The suggestion was understandable, but it would use up too much time and space.

3. **Mr. Iwasawa** commended the Rapporteur's work and hoped that the draft general comment could be finalized soon. He drew attention to the distinction between the words "should" and "must": the latter was warranted when an action was required by law, but in its concluding observations the Committee regularly used the word "should", even when it believed that an action was required by law. Secondly, the phrase "General remarks" sounded too conversational to his ears and he wondered whether it might not be better to replace the word "remarks" by the word "part". Lastly, he thought that paragraph 67 should be appended to the end of the general part.

4. **The Chairperson** noted that the United States of America had said that the Committee's views were "neither primary nor authoritative sources of law" and should not be cited as such. In that connection, he drew attention to the case of *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, in which the International Court of Justice had said that great weight should be attached to the interpretation adopted by the independent body established specifically to supervise the application of the Covenant. Australia, meanwhile, had said that whether or not the examples given amounted to violations of the Covenant would depend on the facts and circumstances in each

individual case. A constant difficulty faced by the Committee in dealing with Australia, however, was that it tended to apply blanket measures without taking account of individual cases.

5. **Mr. Neuman** said that he had taken the term "General remarks" from earlier general comments, but he could look at other possibilities.

Paragraphs 1 and 2

6. *Paragraphs 1 and 2 were adopted.*

Paragraph 3

7. **Mr. Neuman** said that there had been two suggestions for possible additions to the list of the categories of person that some States might view as not protected, those being lesbian, gay, bisexual and transgender (LGBT) persons and stateless persons. He found those suggestions acceptable.

8. **The Chairperson** said that another suggestion had been to include migrant workers in the list.

9. **Mr. Shany** said that he had no objection to any of the suggestions, but any list ran the risk of antagonizing any group that was omitted. He therefore suggested replacing the list with the phrase "every human being".

10. **The Chairperson** said that the Committee had discussed the matter at length on first reading. If there had been a large number of suggestions for additions to the list, he would have considered reopening the discussion, but there had not.

11. **Mr. Bouzid** endorsed the suggestion that migrant workers should be added as a separate category.

12. **Mr. Seetulsingh** said that indigenous peoples might feel aggrieved at being left off the list.

13. **The Chairperson** said that no representatives of indigenous peoples had objected and, in any case, the Covenant clearly covered them.

14. **Ms. Chanet** said that, most importantly, the impression should not be given that the list was exhaustive.

15. **Mr. Neuman** said that he had no objection to adding migrant workers to the list. Originally, the text had referred to aliens, refugees and asylum seekers. There was no need to add a reference to indigenous peoples, because the list was of people who faced denial of their rights.

16. **The Chairperson** suggested that, since the document was of some legal significance, the phrase "among others" should be replaced by the more formal-sounding "inter alia".

17. *Paragraph 3, as amended, was adopted.*

Paragraph 4

18. *Paragraph 4 was adopted.*

Paragraph 5

19. **Mr. Neuman** said that paragraph 5 had attracted several comments from States. Australia had suggested that the Committee should provide a definition of the phrase "deprivation of liberty", while Belarus wanted the Committee to avoid defining it.

Although it had not provided a definition, the general comment did differentiate liberty from freedom of movement and provided examples, which were not meant to be exhaustive. The problem with definitions was that one abstract term was defined in terms of another and no problems were solved. The Committee's approach was the right one. The United States suggested that the Committee should use the paragraph to reject its traditional interpretation of the extraterritorial applicability of the Covenant. It was also concerned about the Committee's characterization of solitary confinement and restraining devices, and also the detention of children for "educational purposes", as deprivation of liberty. Austria had objected that confinement to a restricted area of an airport did not necessarily amount to deprivation of liberty, but, in his view, the Committee's decision was correct: confinement to a restricted area was a deprivation of liberty. One NGO wanted to use the language of the European Court of Human Rights to distinguish between liberty of person and freedom of movement. The Committee had discussed the matter previously and rejected the distinction, out of a concern that it could be used inappropriately to narrow the meaning of deprivation of liberty. A confidential source had suggested that detention for immigration-related purposes should be mentioned and, in that case, he would suggest that the example could be added to the existing footnote. Other examples had been suggested, to which he had no objection in principle, but the Committee should not unnecessarily multiply the number of words used.

20. **The Chairperson** said, with regard to the challenge by the United States to the extraterritorial application of the Covenant, that the Committee would surely prefer to take its lead from the International Court of Justice, which had confirmed in the case concerning "*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*" that the Covenant did apply extraterritorially.

21. **Mr. Kälin** said that the relationship between articles 9 and 12 of the Covenant should be clarified, but such a clarification belonged in paragraph 60.

22. **The Chairperson** said he took it that the only amendment was to add a reference to the detention of immigrants in a footnote.

23. *Paragraph 5, as amended, was adopted.*

Paragraph 6

24. **Mr. Neuman** said that two NGOs had made opposing comments. The existing text need not be changed.

25. *Paragraph 6 was adopted.*

Paragraph 7

26. **Mr. Neuman** said that the United States had rejected the Committee's traditional understanding of security of person and wished it to limit the notion to the security of persons who were in custody. He was not persuaded that that was the right course. Australia seemed to be unaware that the Committee had previously used article 9 in connection with domestic violence and therefore suggested that it should use material from the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child to ensure consistency. The Human Rights Committee had adequately addressed the issue and did not need to refer to other human rights treaty bodies. The United Kingdom focused on footnote 15 to disagree with the Committee's usual understanding of the extraterritorial applicability of the Covenant. A confidential source had suggested the replacement of the phrase "sexual minorities" by the phrase "sexual orientation and gender identity". Although he did not believe that only one form of jargon could express a given idea, he was willing to endorse the suggestion and reword the paragraph accordingly. Various NGOs had suggested additions, but the paragraph had originally been drafted as a

compromise following a long discussion that had left room for further developments relating to the phrase "security of person". In his view, the Committee was not ready to spell the concept out in greater detail. Some comments had viewed the reference to patterns of violence as being too restrictive. That had not been his intention, but the addition of the words "for example" might clarify the paragraph. He had no objection to adding persons with disabilities to the list of persons subject to patterns of violence.

27. **Mr. Kälin** suggested that paragraph 7 should be moved to the end of part I, after paragraph 9, in order to make a more logical progression. He also suggested that the phrase "or other third parties" should be added at the end of the third sentence, following the words "private actors". Threats to life could come from troops or the authorities of another State, for example.

28. **Mr. Rodríguez-Rescia** said that he was inclined to support the suggestion by Amnesty International that the paragraph should specifically mention the excessive use of force even when a person was not deprived of his or her liberty, as in the case of demonstrators.

29. **Ms. Majodina** endorsed that view. The paragraph could also specify that States parties should prevent and remedy violations of the right to security of person.

30. **Mr. Zlătescu** noted that the phrase "violence and abuse" was used in relation to the treatment of children but only the word "violence" appeared in relation to women or sexual minorities.

31. **Mr. Neuman** said that he had no serious objection to moving paragraph 7 to the end of part I. As for the addition of "or other third parties", foreign governments were also governmental; he could, however, accept the amendments. With regard to Mr. Rodriguez-Rescia's point, the paragraph already used the phrase "unjustifiable use of force in law enforcement", though without singling out particular categories. Moreover, using the draft general comment to expand a discussion of the scope of articles 19 and 21 of the Covenant was not the best use of the word limit. As for the phrase "violence and abuse", he would prefer to delete the words "and abuse" in referring to the treatment of children.

32. **Mr. Kälin** said the wording "either governmental or private actors" did not make it clear that foreign Governments were included. He therefore proposed the wording "from any governmental or private actor".

33. *The proposal was accepted.*

34. *Paragraph 7, as amended, was adopted.*

Paragraph 8

35. **Mr. Neuman** said that the United States objected to applying liberty of person to the actions of private parties. Australia had proposed alternative wording, but he did not consider it an improvement on the current text. Mads Andenæs of the Working Group on Arbitrary Detention had suggested expanding the discussion of the duty of States with regard to actions of other States operating in their territory. Further consideration could be given to that point if the Committee so wished.

36. **Mr. Fathalla** said that he supported the proposal to refer to the "duty to take appropriate measures to protect", as the current wording was too general.

37. **Ms. Chanet** said that it was necessary to specify what was understood by the "activities of another State within their territory". It should be clear that kidnapping was the main concern. As currently worded, it might be interpreted to include the foreign funding of NGOs, which was being restricted in a number of countries at present. She suggested referring to activities that might impair or threaten liberty of person.

38. **The Chairperson** agreed that, although that was probably intended to be implicit, the words "that might impair personal liberty" could be added.

39. **Mr. Neuman** said that he had not initially been in favour of the Australian proposal because "appropriate measures" appeared in the second sentence, thus quickly clarifying the nature of the duty mentioned in the first. It could, however, be repeated in the first sentence if the Committee wished to make it clear that the duty to protect was not an absolute duty. Given that the reference in the last sentence was to detention by another State acting within the territory of the State, the ambiguity might be resolved by simply referring to "detention" rather than "activities". He was concerned that the phrasing proposed by Ms. Chanet could actually be interpreted to mean the very thing she wished to avoid – the prevention of foreign funding of NGOs.

40. **Mr. Shany** agreed with Mr. Fathalla. Noting that the words "appropriate measures" were used in the second sentence but not the third, he suggested introducing them in the first sentence as a chapeau and using the same formulation in the second sentence as in the third. As to the last sentence, he wondered whether replacing "activities" with "infringements" might be possible.

41. **Mr. Zlătescu**, referring to the second sentence, asked whether, in addition to abduction or detention, reference should not also be made to "ill-treatment".

42. **The Chairperson** said that such a reference would not be appropriate in paragraph 8, which dealt exclusively with detention. The point could be borne in mind when it came to discussing the interrelationship between articles 7 and 9.

43. **Mr. Seetulsingh**, referring to the last sentence, asked why the reference was to States parties "doing their utmost" to take appropriate measures.

44. **Mr. Neuman** said he supported Mr. Shany's proposal concerning "appropriate measures". In the last sentence, if the word "infringements" were accepted, it should be followed with "by the action of another State". Those actions included situations in which the troops of another State had invaded or were occupying portions of its territory. The words "do their utmost" had been added by the Committee to stress the strong efforts the State should be making in those situations, although recognizing that it might not be able to prevent deprivations.

45. The Chairperson said that, in his view, the term "infringements" was rather too elastic.

46. Mr. Neuman proposed the wording "protect individuals against deprivation of personal liberty by the action of another State within their territory."

47. *Paragraph 8, as amended, was adopted.*

Paragraph 9

48. **Mr. Neuman** said that he agreed with the suggestion by Australia to refer to "effective" rather than "adequate" remedies in the final sentence. However, he did not agree with Australia that paragraph 9 should employ concepts of attribution from the law of State responsibility. The United States had raised the same objection to the duty to regulate private actors. One NGO believed there was a need to be more explicit about privately run prisons, but in his view it was clear that they were being referred to in that paragraph. He did not support suggestions to include privately managed immigration detention and expand on the subject of privatization.

49. **Ms. Seibert-Fohr** said that it was clear from article 5 of the International Law Commission's draft articles on Responsibility of States for Internationally Wrongful Acts

that if a State authorized an entity to exercise governmental authority, there was State responsibility. She therefore did not see any contradiction in paragraph 9.

50. **Mr. Kälin** said that, in his view, Australia had made a valid point. Two situations covered in the draft articles on State responsibility were of relevance. Article 5 dealt with the conduct of persons or entities exercising elements of governmental authority, such as prisons not run by a State authority but by a private company on behalf of the State. Article 8 addressed conduct directed or controlled by a State, such as a law regulating private security companies and allowing them to lock up their staff as a disciplinary sanction. No distinction was made between those two situations in the current draft. Therefore, for the sake of clarity, he proposed redrafting the first sentence to read: "When private individuals or entities are empowered or authorized". "Empowered" would address the content of article 5 of the draft articles, while "authorized" would cover article 8. The second part of that sentence should read "the State party remains responsible for adherence and ensuring adherence ...".

51. *Paragraph 9, as amended, was adopted.*

The meeting was suspended at 11.30 a.m. and resumed at 11.45 a.m.

52. **Mr. Neuman** said that, as the title of part I was the same as that used in general comments Nos. 32 and 34, Mr. Iwasawa had agreed that, although perhaps not ideal, it created a certain precedent and so would continue to be used.

Paragraph 10

53. **Mr. Neuman** said that there had been no comments concerning paragraph 10.

54. *Paragraph 10 was adopted.*

Paragraph 11

55. **Mr. Neuman** said that he supported the proposal by the Danish Institute for Human Rights to add, in the first sentence, "unlawful deprivation of liberty, i.e." before "deprivation of liberty that is not on such grounds ...". The same NGO, Switzerland and another source recommended spelling out more clearly the difference between unlawful and arbitrary detention. Amnesty International had recommended leaving more room for future developments. Detention that was based on a mistaken interpretation of domestic law could be unlawful without being arbitrary if the mistake was not too gross. Article 9, paragraph 4, was intended to give domestic courts the opportunity to correct legal errors made in good faith and not just the gross errors that would render detention arbitrary. Another source would like the Committee to discuss maximum periods of detention, but that paragraph would not be the appropriate place; it would be a mistake to demand maximum periods of detention for all categories of detention.

56. **Mr. Kälin** said that some of the comments might have been prompted by a lack of clarity concerning the term "unlawful", given that it could mean either not in accordance with the law in general, including international law, or in violation of domestic law. In the second sentence, "unlawful" was being used in the latter sense. Perhaps it would be clearer to say that "arrests or detentions may be in violation of domestic law but not arbitrary".

57. **Mr. Shany** said that he would be reluctant to state that the domestic law was always the relevant framework for assessing legality of detention. For example, when international forces exercised powers of detention during peacekeeping missions, it could be argued that the Security Council or other mandate that provided them with those powers was the relevant framework.

58. **Mr. Kälin** proposed the formulation: "arrests or detention may be in violation of the law authorizing such actions but not arbitrary".

59. **Ms. Seibert-Fohr** said that such a formulation suggested a much narrower interpretation of "unlawful" than was the Committee's usual understanding.

60. **Mr. Kälin** proposed the wording: "may be in violation of the law applicable to ...".

61. **Mr. Neuman** suggested the wording "may be in violation of the applicable law".

62. *Paragraph 11, as amended by the Rapporteur, was adopted.*

Paragraph 12

63. **Mr. Neuman** said that Belarus had commented that lawful detention could never be arbitrary. However, the *travaux* of the Covenant clearly supported the Committee's view on that point. The United States had said that necessity and proportionality should not be elements of what was arbitrary and objected to the requirement of periodic review. The United Kingdom had requested clarification of the Committee's reference to "inappropriateness" and how the notion of fixed terms of imprisonment applied to whole-life tariffs. It was for the Committee to decide whether the paragraph was ambiguous on that point. Switzerland had expressed the view that periodic review could be either ex officio or by application, which was what the Committee intended. Amnesty International believed the paragraph did not specify sufficiently clearly that periodic review applied outside a criminal context. Perhaps the paragraph could be recast to make that clearer, referring to "any form of detention". Mads Andenæs and Lawrence Hill-Cawthorne recommended adding language about the clarity of grounds for detention, which was discussed in paragraph 22. Another source recommended referring to discriminatory detention on grounds of sexual orientation and gender identity, but that was not the appropriate paragraph in which to do so. There was another proposal to require independent administrative or judicial review prior to detention, which was not appropriate in a general paragraph.

64. His only proposal in relation to paragraph 12 was that, in the final sentence, the words "in detention" should be replaced with "in any form of detention".

65. The Chairperson said that the Committee would, at some point, need to address the acceptability or otherwise of whole-life sentences.

66. *Paragraph 12, as amended, was adopted.*

Paragraph 13

67. **Mr. Neuman** said that, despite requests from certain States parties to limit the scope of the term "arrest" to criminal arrests, the original wording should stand. He pointed out that, in article 9, paragraph 2, of the Covenant, notice of reasons applied to all forms of detention, while notice of charges was relevant only when there were criminal charges.

68. **The Chairperson** said that it had long been accepted, both in the practice of the Committee and in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, that the notion of arrest had to be understood to have a broader meaning, as reflected in paragraph 13.

69. *Paragraph 13 was adopted.*

Paragraph 14

70. **Mr. Neuman** said that, although the United States had expressed uncertainty as to the meaning of the fifth sentence, the paragraph should be adopted as it stood, on the understanding that explanatory footnote 45 would be retained.

71. *Paragraph 14 was adopted.*

Paragraph 15

72. **Mr. Neuman**, summarizing some of the many comments that had been received, said that Australia wished to delete the paragraph and all discussion of international humanitarian law in the draft general comment, while Switzerland believed that the matter would be better addressed in a separate paragraph in part VII. The United States had suggested deleting the word "international" before "armed conflict" on the grounds that international humanitarian law was the *lex specialis* in both international and non-international armed conflicts. It also stated that elements of the paragraph were incorrect, that article 9, paragraph 4, of the Covenant was not applicable in all cases, that the notions of imperative threat and increasing burden of proof were unjustified, that the words "absolutely necessary" should be replaced with "necessary" or "reasonably necessary", and that it had not been made explicit that the reference to guarantees did not apply to article 9, paragraph 3, of the Covenant. Some NGOs, meanwhile, had maintained that the paragraph was not protective enough, and that security detention was only ever permissible by derogation, which was not always an option.

73. It was important to bear in mind the relationship between paragraph 15 and a number of paragraphs in part VII. Adoption of the paragraph should be provisional, allowing the Committee to revisit it in the light of subsequent discussions on the interrelated paragraphs that followed. While he was uncomfortable with the content of the paragraph, he would prefer to express the will of the Committee rather than contribute further to shaping it.

74. **The Chairperson** said that the discordant comments from sources were indicative of the difficult position in which the Committee found itself. It would be easy to restrict the application of paragraph 15 to internal armed conflict, given that detention in international armed conflict was dealt with by the Third and Fourth Geneva Conventions. Nevertheless, he recalled that general comment No. 35 was designed to replace general comment No. 8, and that, should the Committee avoid the problematic issue of transnational armed conflict, which the Supreme Court of the United States had equated to non-international armed conflict in its ruling on the case of *Hamdan v. Rumsfeld*, it would not be discharging its responsibilities fully.

75. **Mr. Rodríguez-Rescia** said that he had misgivings over whether the Committee should allow administrative detention on security grounds. If it did, it should ensure that the protection against arbitrary deprivation of liberty provided for in paragraph 15 was at least commensurate with that embodied in article 9 of the Covenant.

76. **Mr. Shany**, supported by **Ms. Chanet**, said that, while paragraph 15 should be retained, the Committee should review the sharp distinction that it had made between international and non-international armed conflict. Transnational armed conflict, though viewed as a form of non-international armed conflict, bore many resemblances to international armed conflict. Consequently, the Committee should either amend the paragraph to reflect the applicability of international humanitarian law to non-international armed conflict, or differentiate between the various types of non-international armed conflict and the standards applicable in each case.

77. In view of the progress being achieved in the formulation of standards applicable to non-international armed conflict, the Committee should leave the door open for future developments to inform the interpretation of article 9, paragraph 1, of the Covenant.

78. **Mr. Salvioli** said that the Committee should guard against ambiguity, which some States parties exploited to serve their intentions, by basing paragraph 15 on the very clear provisions laid down in the Covenant. Any mention of the exceptional circumstances under which lawful derogating measures could be taken should thus take article 4 of the Covenant as its point of departure.

79. **Mr. Kälin** proposed deleting the second sentence and adding a sentence at the end of the paragraph to the effect that article 9, subject to derogation, remained applicable in situations of armed conflict, and that security detention that was permissible under international humanitarian law did not amount to arbitrary detention. In that way, the Committee would avoid taking a stance on the content of international humanitarian law, which was outside its mandate, and make it clear that the Covenant was applicable in cases where *lex specialis* was not.

80. **The Chairperson** said that, to avoid misinterpretation, the words "permissible under" should be replaced with "provided for and regulated by".

81. **Mr. Shany** said that "authorized by" might also be used instead of "permissible under". He agreed that the second sentence should be deleted, and pointed out that the third sentence would have to be amended accordingly.

82. **Ms. Chanet** said that the word "derogation" should not feature in a general comment on article 9.

83. **The Chairperson** said that the important doctrinal issue of derogations, which would be studied in part VII of the text, left the Committee with a dilemma. On the one hand, there had, until recently, been calls for it to consider administrative detention as inherently arbitrary unless subject to measures required by a state of emergency, with article 4 of the Covenant stipulating that there had to be a threat to "the life of the nation" and that States parties had to provide notification of derogation. On the other hand, in the context of multilateral enforcement actions authorized by the Security Council, the Committee could not oppose the authorization of administrative detention under certain circumstances, nor could it insist that States parties issue a notification of derogation in order to render the action lawful, and yet the Covenant had extraterritorial applicability.

84. **Mr. Shany**, referring to the fourth sentence, sought clarification on the meaning of the word "increases", which might imply that States parties had to supply more evidence the longer an individual remained in detention.

85. **The Chairperson** said that the intention was not to put an impossible burden on States parties at the outset of detention. The word "increases" referred to the raising of the standard or threshold of proof the longer detention continued. He would be happy for the Committee to consider alternative drafting.

86. **Mr. Neuman**, referring to Mr. Kälin's proposal to incorporate a new sentence in the paragraph, wished to know what the sentence would apply to. His own view was that article 9 should also apply in the context of armed conflict, but there were still question marks over what the requirements of the article should be in a variety of situations, both infraterritorial and extraterritorial.

87. **The Chairperson** said the general feeling among members appeared to be that the existence of armed conflict should not automatically preclude the application of article 9. He invited Ms. Chanet, Mr. Kälin and Mr. Shany to draft a provisional text on that basis.

The Committee could continue to use language borrowed from international humanitarian law and might consider referring to the criteria established in article 4 of the Covenant.

88. **Ms. Chanet** said that the Committee should be wary of taking a step backwards in relation to its general comment No. 8. Its approach to the issue of the burden of proof on States parties should be grounded in its own perspective vis-a-vis article 9 of the Covenant, without complicating matters by mentioning other international laws.

The meeting rose at 1 p.m.